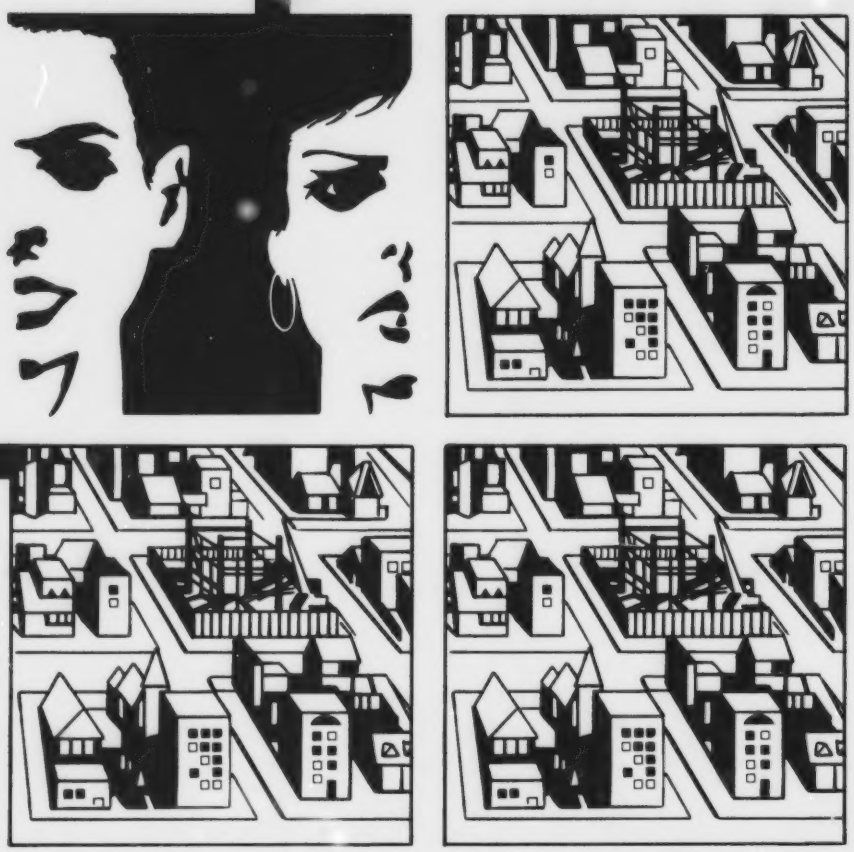
STREET PROSTITUTION

Assessing the impact of the law

Synthesis Report



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STREET PROSTITUTION: ASSESSING THE IMPACT OF THE LAW

SYNTHESIS REPORT

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CHAPTER I
INTRODUCTION

In December 1985, Parliament passed Bill C-49 to respond to the problem of street solicitation. The Bill replaced section 195.1 of the Criminal Code with a new section, which made criminal the attempt to communicate with or to stop a person in a public place (redefined to include a private vehicle) for the purposes of obtaining the services of a prostitute. The Bill included a mandatory review clause; the review was to commence no later than three years after the coming into force of the new law and to terminate no more than one year later. The Honourable John Crosbie, then Minister of Justice, indicated that Bill C-49 would achieve the goal of controlling street prostitution by addressing the nuisance aspects of the street trade.

The early 1980s had witnessed the appearance of considerable numbers of street prostitutes[1] in several major cities, including Vancouver, Calgary, Toronto, Montreal and Halifax. These men and women often carried out their activities in residential areas and were seen as a serious problem by many communities. Local citizens, individually and in organized groups, complained of traffic congestion and honking horns; noise throughout the night in previously quiet areas; trespassing on private property; residents being pestered and treated abusively by prostitutes and their customers; the negative impact on youth activities in the area and neighbourhood businesses; and increased crime and violence. They demanded that politicians, municipal officials and police remove street soliciting from their neighbourhoods.

While there has been speculation among various observers as to the exact causes of the apparent increase in the number of visible street prostitutes, law enforcement authorities throughout Canada argued that its roots lay in a series of Supreme Court decisions which progressively rendered the Criminal Code section dealing with street prostitution useless.

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[1]In this report, "prostitutes" refers to both men and women. For ease of reading, however, the female gender is used in association with the term, except where a distinction is made.

1. *Historical Background*

To fully understand the intent of Bill C-49, it is necessary to review briefly the recent history of Canadian prostitution legislation. Prostitution *per se* has never been a crime in Canada; rather, it has been, and continues to be, attacked indirectly. Currently there are myriad prohibitions surrounding the act of taking money for sex. These offences include the bawdy house offences, the procuring and pimping offences, the soliciting, as well as other Criminal Code provisions related to "nuisance" behaviour (e.g. disturbing the peace).

Taken as a whole, these laws ensure that there is an element of illegality about prostitution, whatever the practice takes, whether indoors or outdoors.

These laws were developed in an ad hoc manner and reflect concerns that have arisen at different points in our history. In a report entitled Prostitution in Canada, Constance Backhouse[2] notes that early prostitution legislation in Canada had three main approaches -- regulation, prohibition and rehabilitation. The approaches reflected disparate views ranging from those of moral reformers who wanted to see prostitution eradicated, to those of saviours who saw prostitutes as blameless victims needing to be protected by the law.

The early 1970s marked the inception of modern street prostitution legislation. In 1972, "Vag C" or the vagrancy law, dating from the prohibition era, was repealed. The vagrancy law held that a woman had to be able to account for her presence on the street or risk being prosecuted as a "common" prostitute. Changing times and objections from civil libertarians necessitated the shifting of focus of prostitution law from a "status offence" involving no specific behaviour to one prohibiting soliciting.

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[2]Canadian Advisory Council on the Status of Women, Prostitution in Canada (1984).

The 1972 legislation made it a summary conviction offence to solicit in a public place for the purpose of prostitution. Section 195.1 of the Criminal Code of Canada read: "Every person who solicits any person in a public place for the purpose of prostitution is guilty of a summary conviction offence". Prostitution itself was not an offence but soliciting or publicly obtaining customers was.

Between 1972 and 1981, courts throughout the country struggled with interpretations of what the new term "solicit" meant. Provincial courts of appeal were asked to rule as to whether a wink, a nod or a casual conversation constituted soliciting. Court decisions generally held that where a level of importuning or persuasion was exercised, soliciting had taken place.

In 1978, the Supreme Court of Canada ruling in R. v. Hutt[3] held that soliciting, to be seen as a crime, had to be pressing or persistent. Although this ruling attempted to refine the definition of soliciting, it still did not specify exactly what the prohibited behaviour was. Subsequent Appeal Court rulings in R. v. Whitter[4] and R. v. Galjot[5] found that to be pressing and persistent, soliciting had to be done to one person rather than several individuals serially.

Court decisions also differed on whether customers could be charged with soliciting and on what was meant by the term "public place". Decisions that found that a motor vehicle was not a public place were seen by police forces as a critical impediment to the control of street prostitutes. According to law enforcement agencies, the cumulative effect of the higher court decisions was the tying of their hands with regard to the control of street prostitution. In the early eighties s. 195.1, the soliciting section, virtually ceased to be used in many cities.

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[3](1978), 38 C.C.C. (2d) 418 (S.C.C.).

[4](1980), 52 C.C.C. (2d) 539 (B.C.C.A.).

[5]Ibid.

2. *The Fraser Committee*

In June 1983, faced with considerable public pressure to remedy the street prostitution "problem", the Government of Canada established the Special Committee on Pornography and Prostitution (the Fraser Committee) to study the problem and to report to the Minister of Justice. The mandate of the committee with respect to prostitution was to:

(1) consider prostitution in Canada, especially loitering and street soliciting for prostitution, the operation of bawdy houses, living on the avails of prostitution, the exploitation of prostitutes, and the law relating to these matters;

(2) ascertain public views on ways and means to deal with the problem;

(3) consider the experience and attempts to deal with prostitution of other countries;

(4) consider alternatives, report findings and recommend solutions to the problems associated with prostitution in Canada.

To support the work of the Special Committee on Pornography and Prostitution, the Department of Justice conducted a program of socio-legal research.

The Fraser Committee held public and private hearings in 22 centres across the country in an attempt to obtain maximum input from the Canadian public as to its concerns about prostitution. The hearings illustrated that the street prostitution issue appeared to divide the Canadian public; it pitted municipal officials, police forces and citizens' groups, who felt that the Criminal Code should be strengthened to control street prostitution, against civil libertarians, women's groups and social service agents who favoured some form of decriminalization of this behaviour.

In May 1985, the Committee reported to the Minister of Justice with 16 recommendations dealing with the issue of adult prostitution. Prostitution was described as a social problem that required both legal and social reforms.

The Committee chose to see prostitutes and customers as willing, responsible actors who should not interact in public, but who should be afforded the same protection from force, threat or coercion that is available to all citizens. With respect to street prostitution, it noted that the nuisance to citizens was the main ill to be addressed. Furthermore, in its commentary, the Committee noted that the current prostitution law:

> in both its substance and enforcement, fails to recognize the reality that if pressure by the law is exerted in one context or location, it will produce a shift of the activity to another setting or location. This is seen in street prostitution where police charges or harassment in one location will produce a migration or dispersal of prostitutes to other areas which appear to be less subject to police scrutiny and public concern. It is also manifest in the examples of prostitution moving on or off the streets in correlation to vigorous enforcement against street soliciting, soliciting in bars or bawdy house activity.[6]

To remedy some of the economic and social causes of prostitution, the Committee recommended that all levels of government work to remove social inequities between men and women, to provide adequate educational and social programs for women and youth in need, and to continue research to better understand the problem of prostitution.

On the legal front, the Committee noted that the existing prostitution law was "unsatisfactory, as a vehicle for proscribing the nuisance effects of street prostitution".[7] The report therefore recommended that section 195.1 be repealed, and the nuisance aspect of street soliciting be dealt with by amendments to section 171(1) dealing with disorderly conduct. The Committee advocated a coordinated approach which would:

(1) remove the prostitution-related activities of both street prostitutes and customers from the Criminal Code except when they

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[6]Report of the Special Committee on Pornography and Prostitution: Pornography and Prostitution in Canada, Volume 2 (Ottawa: Ministry of Supply and Services, 1985), 532.

[7]Ibid, at 540.

contravene existing Criminal Code provisions by creating a definable nuisance;

(2) rewrite the procuring and living-on-the-avails sections of the Code, which currently deal with exploitative behaviours, to prohibit instead behaviour which involves force or threats of force;

(3) rewrite the bawdy house sections to enable small numbers of prostitutes to work from their homes and to permit provinces to regulate these small scale prostitution establishments.

3. *The Legislative Response: Bill C-49*

Although the Special Committee recommended the partial decriminalization of street solicitation, the government instead chose to amend s. 195.1 in the direction suggested by the Justice and Legal Affairs Committee of the House of Commons. This committee had recommended that "offering to engage in prostitution" be made a Criminal Code offence. To this end, Bill C-49 was passed in December 1985. With the passage of Bill C-49, section 195.1 now states that every person who in a public place

> stops or attempts to stop a motor vehicle; impedes the free flow of pedestrian or vehicular traffic; stops or attempts to stop or in any manner communicates or attempts to communicate for the purpose of obtaining the services of a prostitute is guilty of a summary conviction offence.

The term "every person" means that both prostitutes and customers are liable to prosecution, while "public place" includes a motor vehicle, thus clarifying two limitations of the former legislation.

In light of the considerable controversy and concern surrounding Bill C-49, Parliament included a requirement to review the law as part of the legislation.

4. *Defining the Review Issues*

Both at the time of its passage and during its brief history, Bill C-49 has been controversial legislation. Its critics believed that the Bill violated sections of the Charter

of Rights, notably the freedom of speech and association provisions. Others suggested that the law would have a harmful effect on street prostitutes, forcing them into the hands of pimps, driving them underground, alienating them from the police and making their work more dangerous. Social agencies feared that their prostitute clients would be more wary of involvement with the available services, and hence more difficult to reach. Proponents of the amended section, on the other hand, believed that the Bill would enable police and the courts to control street prostitution and would rectify the inequity of charging prostitutes rather than customers.

Section 195.1 has been the subject of a number of court challenges based on the Charter, fulfilling at least one of its critics' predictions. Higher courts in several provinces have been asked to rule on its constitutional validity; their decisions have been mixed. At the time of writing, the Supreme Court of Canada is in the process of deciding whether the subsection of s. 195.1 relating to "communication for the purposes of prostitution" violates the Charter.

Although on one level Bill C-49 is simple in its intent to move customers and prostitutes off the street by more clearly criminalizing their behaviour, the law was interpreted by enforcement groups as conferring two very different mandates on the criminal justice system.

The first perspective views street prostitution as a behaviour to be eliminated. The objectives in this case are to make practitioners leave the business and to impel customers to seek sexual services elsewhere. In this view, the law must be employed to deter and incapacitate both actors from engaging in street solicitation. The second perspective acknowledges that streetwalking can never be totally eliminated, and the primary objective of the law is to reduce the nuisance effects -- presumably by containment or regulation rather than deterrence or incapacitation strategies.

5. *The Program of Research*

In order to support the review of Bill C-49 by Parliament, the Department of Justice undertook a program of evaluative research to examine four major concerns raised by Bill C-49.

(1) Has there been a reduction in the number and visibility of street prostitutes and their customers?

(2) What have been the law's other effects (e.g. the displacement of street prostitution to off-street services, increase in danger encountered by prostitutes, deterioration of prostitute/police relations)?

(3) Have the police and courts found the law easier to apply than previous legislation?

(4) Has the law been applied equally to male and female prostitutes, and to their customers?

To address these issues, a series of specific questions about Bill C-49 were formulated:

- How was the law implemented by police? Were special units created? Were special enforcement policies developed? Did forces recruit additional personnel? How were arrests made?

- How many charges were laid? What circumstances led to a decision to file a case, to drop a charge?

- Who was charged? What was the ratio of males to females and of prostitutes to customers?

- Did the law have any effect on investigations of other forms of prostitution?

- Did the accused plead guilty or not guilty? How many were found guilty? What were the sentences?

- How many cases were heard in court? How many decisions were made?

- Did the law contribute to a decrease in street solicitation? If yes, to what degree? If no, why not?

- What were the consequences of the law in city sectors where prostitution was practised? What were the effects on other forms of prostitution (for example, escort services, massage parlours)?

- Did the law contribute to a geographical displacement of prostitution activities (for example, from one area to another)?

- Did the law contribute to a modification of the venues for prostitution (for example, from the streets to hotels, bars)?

- Did the law modify the practices of prostitution for those who are involved (for example, relations between prostitutes and customers; presence of pimps and other intermediaries; age and other characteristics of prostitutes)?

To address these questions, the Department of Justice, in 1987-1988, sponsored research on the implementation and impacts of the revised s. 195.1 in a series of site studies. The major sites were Vancouver, Calgary, Toronto, Montreal and Halifax. Less exhaustive research was conducted in Regina, Winnipeg, London, Niagara Falls, Ottawa, Trois-Rivières and Quebec City. These communities were selected because they had expressed concern at Fraser Committee hearings and elsewhere about the presence of street prostitution. In addition, some pre-C-49 data were available for most of the sites, because of these cities' involvement in the field studies for the Fraser Committee.

CHAPTER II
METHODOLOGY

This chapter first examines some of the methodological issues at stake in any research which attempts to assess the impact of criminal legislation. Next, the research methods used in the five major study sites are described.

1. *Evaluating Legislation*

Historically, evaluation research has been used to evaluate human service programs. Recently, this tool has assumed considerable importance in decision-making and the policy development process within many large bureaucracies.

In the United States, there have been attempts to evaluate the impact of changes in legislation, most notably sexual assault and impaired driving laws. Several concerns have emerged from these attempts. It is generally believed that laws can affect some behaviour; yet we do not know the exact mechanism through which this happens. For this reason, there is a need for both qualitative and quantitative methods in evaluation research. Quantitative data are required in order to answer questions related to the magnitude of an intervention's effects, and qualitative data are needed to understand the reasons why the anticipated outcomes were or were not achieved.

Legislative evaluations use interrupted time series analysis or pre-post examination. In this latter design, research looks at a situation (incidence of crime) before a given intervention (new legislation) and after it, to assess whether any change has taken place.

This review of the implementation and effects of the revised prostitution law falls into the category of the "pre-post" assessment. While time series analysis is a preferable methodology, there were insufficient pre-law data on the numbers of street prostitutes and customers to undertake this type of statistical analysis. Similarly, there were no

police charge data over time, since Canadian police departments had largely stopped enforcing the soliciting legislation for about half a dozen years prior to the new law. Furthermore, there were few or no data on various measures of the phenomenon of street prostitution for the length of time necessary for time series analysis to be undertaken.

For several reasons, serious limitations exist in the pre-post design. Very often the requirement for identical pre- and post-information is not met. Also, where the data on the phenomenon under investigation do show a change over time, it is extremely difficult to attribute any changes to the intervention. It is only when the data are coupled with other sources of information that one can speculate about causality. As an example, at almost the same time as Bill C-49 was enacted, there was growing concern in the media about the increased incidence of the AIDS virus, including the role of prostitutes in the transmission of the disease. Any before-and-after data that appear to show a reduction in the number of prostitutes and/or their customers could be the consequence of the fear of AIDS or some other unrecognized factor, not Bill C-49 or its enforcement by the police. Economic factors may also play a role, making it difficult to identify sources of change. Since the mid-1980s, Toronto has experienced an economic upsurge, whereas Calgary has had a downturn.

Another issue is the one of timing -- how long after any legislation has been passed should one expect an impact on behaviour? Short-term changes that are measured may be only a first stage in a much larger change or, conversely, there may be an immediate, but brief, impact. After any intervention, especially one as complex as a revision to the Criminal Code, it is difficult to predict when normalization or stabilization may occur. In the case of this research, the field work was begun approximately 18 months after passage of the law and was concluded about 24 months after. This timing therefore represents a snapshot of what was happening on the streets of major cities in the last half of 1987. It does not make precise measures on the impact of the law in the short term, immediately after December 1985, when C-49 was proclaimed, nor does it enable the continuous charting of changes in the street scene

over the period of the legislation. This research was therefore not able to establish the longer term effects of Bill C-49. For example, as time goes on, the publicity surrounding the law may increase customers' perceived risk of getting caught. The charging of prostitutes and their subsequent processing by the courts may discourage some from continuing in the occupation, as they accumulate convictions and possibly experience long periods of imprisonment. The perceived increased certainty of imprisonment may also discourage newcomers. The brief period when this research was opportune precluded the study of these types of consequences.

In addition, as a result of court decisions, the law was not enforced in Halifax for the whole period of the research nor in Calgary for part of that period.[1]

Finally, legislative changes are based on the assumption that once a piece of legislation has been passed, the necessary knowledge about its contents is disseminated in the population. Empirical evidence and common sense show that this assumption is wrong and that much of the population is ignorant of most laws. Therefore, some information about the public's or a target group's knowledge of the law is desirable in order to assess its impact. Since few customers could be interviewed for this research, we do not know the extent of their knowledge of this law.

This study attempted to test whether a specific legislative intervention, Bill C-49, caused a desired change -- a reduction in the nuisance of street prostitution. A pre-post design was used, where the target group, street prostitutes, was studied before and after the intervention. Baseline data were available from research carried out in 1984 (for the Fraser Committee), which described the incidence and nature of prostitution in several Canadian cities. The study then examined the practice of prostitution in 1987 and compared it to practices in 1984, to determine the extent to which there had been any change and, most crucially, the degree to which the change could be attributed to

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[1]However, in all the major sites, secondary data on police charges over the 1½ to 2 year post-law period were available.

Bill C-49. In order to help meet the latter research objective, the study also described how the legislation had been implemented by all of the players in the criminal justice system -- police, Crown, defence lawyers and courts. This information provided the necessary context within which to interpret any changes observed.

2. *Study Methodology*

In this research, efforts were made to standardize data collection methods, instruments, and analysis for the five major site studies. Standardization was believed desirable in order that this overview report could reliably compare the implementation process and effects of the new law across the study sites.

The attempt to conduct comparable research in five major and seven smaller sites was partially successful. Several factors account for this assessment. First, the administration of justice differs among Canadian jurisdictions, and hence the organizational environments in which the research was conducted varied considerably. Second, although some baseline data on the numbers and characteristics of street prostitutes prior to Bill C-49 were available from the field studies prepared for the Fraser Committee, the methodology and contents of these reports were not uniform. Therefore, even though the current research attempted standardization, it was impossible to compare pre-post differences in the same way in each site because of lack of uniformity in the "pre-" data. Third, in the current research, there were five different principal investigators, each with different research interests, skills and philosophical positions on the topic of prostitution. It is not surprising that these background factors affected the content and style of their reports. However, in spite of these factors, the results obtained in each site could be compared on the most important dimensions of the research.

A variety of research methods and data sources was used to collect the information required to describe the way in which Bill C-49 was implemented by the criminal justice system, and the effects of the law on street prostitution.

3. *Interviews with Key Respondents*

In all sites, researchers interviewed senior and line police officers responsible for the enforcement of s. 195.1, Crown attorneys and defence lawyers. Judges were interviewed in two cities; in other cases, the judges believed that it was inappropriate for them to comment on legislation that was undergoing a review by Parliament. The criminal justice respondents were asked detailed questions on how the law had been implemented, their views on the effect of the law on their organizations and on street prostitution, and their degree of satisfaction with the legislation.

It was originally planned that the research would include interviews with three of the main players in the prostitution business -- prostitutes, customers and pimps. As displacement of the street prostitute to indoor modes was one of the most frequently predicted effects of the law, the views and experiences of this respondent group would have assisted us in drawing conclusions about the extent to which this effect had occurred. However, with only a few exceptions, researchers were unable to interview escort agency owners and workers, possibly the only source of information about the degree to which this displacement had taken place.

Prostitutes were asked questions on their knowledge of section 195.1, their pre- versus post-law experiences with the police, and in the prostitution milieu, their impressions of the changes brought about by the law (such as changes in the number of customers, increased danger) and their experiences with the police and the courts. In some sites, detailed data on the social histories of the prostitutes were obtained, while in others only cursory demographic information was collected.

Pimps and customers were only interviewed in two cities; the sample sizes were small and in no way generalizable to the population. Elsewhere, no appropriate or ethical way of finding customers was developed. The omission of customers is more serious than the omission of pimps: information on customers' knowledge of C-49, their

frequency of use of street prostitutes, attitudes towards AIDS, and their experiences with the police and the courts would have greatly enhanced this research.

Social agency staff were interviewed in all sites in order to determine whether they had observed any changes in their prostitute clients, and the extent to which any changes were the result of C-49 or its enforcement. There was also interest in finding out whether the law had any effect on the modes of service delivery to street prostitutes.

A variety of other respondents was interviewed, depending on the city, including business people and residents in areas affected by street prostitution, municipal licensing authorities, owners of bars and strip clubs, representatives of prostitutes' rights groups, and elected municipal officials.

4. *Street Counts of Prostitutes*

In each major site, the researchers undertook counts of street prostitutes at two or more periods during the study, in order to quantify the magnitude of the phenomenon and, by extension, to assess the nuisance factors associated with their presence. These data also served to quantify the intra-city variations in days of the week, times of day, and geographical locations worked by street prostitutes. Furthermore, not only were these street counts essential for across-site comparisons of the size of the street trade, but they will also serve as baseline data for future research.

5. *Analysis of Advertisements for Off-Street Prostitution*

In an attempt to determine the impact of the amended section 195.1 on the off-street sex business, pre- and post-law counts of advertisements in newspapers and other periodicals were analyzed and changes over time in the number of agencies and escort ads were obtained.

6. *Analysis of the Charges Laid under Section 195.1*

In each city, researchers obtained access to official police, Crown, or court data on the way in which prostitutes and customers had been processed by the justice system. Socio-demographic characteristics of the accused, any prior record, where and when the charge was laid, court processing times, pre-trial detention and sentencing information were obtained. These data were analyzed with a special emphasis on the differences in processing prostitutes and customers.

7. *Media Analysis*

A review of local newspapers in each major site was undertaken to monitor the coverage given to Bill C-49, its implementation, and street prostitution in general since the law was introduced. These data helped to assess the way in which the media and citizens perceived the legislation, and the amount of public concern on the topic of street prostitution.

These information sources provided a mix of quantitative and qualitative data with which to make comparisons within and between sites. The differences in the sites could only be understood if the local contexts were also known. Where possible, in our responses to the major research questions that make up the remainder of this report, we have related inter-site variations in findings to the differing environments in which criminal justice workers and other personnel were operating.

CHAPTER III

IMPLEMENTATION OF BILL C-49

This chapter describes the implementation of the amended street prostitution law by the police and the courts and includes sections which address the following questions:

(a) What was the situation with respect to the problems of street prostitution in five major cities in the years just prior to the proclamation of C-49 in December 1985?

(b) How did police forces in the different sites implement the law in its first two years?

(c) How many charges did the police lay and against whom (prostitute or customer)?

(d) How were persons who had been charged processed? What were police and court practices with regard to pre-trial detention, pleas and conviction rates?

(e) How were offenders sentenced?

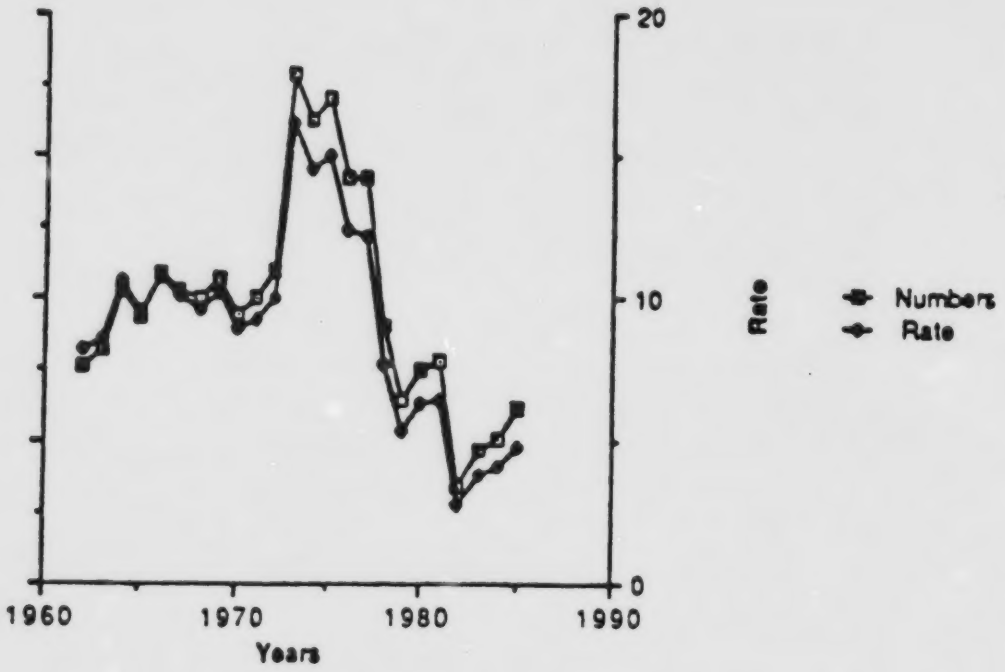
In the discussion that follows, most emphasis is placed on the five major sites involved in the research -- Halifax, Montreal, Toronto, Calgary and Vancouver -- but, where appropriate, comments are provided on the findings from the cities less intensively researched.

A. What Was the Situation with Respect to the Problems of Street Prostitution in Five Major Cities in the Years Just Prior to the Proclamation of Bill C-49 into Law in December 1985?

The following graph represents the trends in all prostitution-related charges recorded officially by the police throughout Canada from 1962 to 1985.

FIGURE 1

PROSTITUTION-RELATED CHARGES RECORDED BY POLICE



The "official record of prostitution" refers to an aggregate measure of prostitution calculated by the Uniform Crime Reports that is obtained by adding all the prostitution related activities -- soliciting, bawdy house offences, procuring, etc. Soliciting makes up over 90% of such charges. The figure suggests that, whether we look at absolute numbers or the rate per 100,000 of the population, police activity was greatest in 1973 (3,573 cases nationwide), and that in the late seventies and early eighties, recorded charges dropped well below the charges for the period 1962 to 1970. This does not mean that prostitution became less prevalent; quite the opposite was probably true. The police seemed to just give up on enforcement of the soliciting section. As the Fraser Committee noted, in the early 1980s "the conviction within the ranks of the law

enforcers" suggested the soliciting law was "worthless" and "deprived ... of any force."[1] Consequently, the numbers reported in the Uniform Crime Reports fell steeply.

As the Fraser Report notes, the decline in the use of section 195.1, although commonly attributed to the 1978 Supreme Court decision in Hutt,[2] began well before this decision. The decline in Criminal Code charges proceeded at a different pace in different provinces and reached an all-time low in 1982. At that time, a number of cities attempted to use municipal by-laws to control street prostitution. Small increases in charge figures were noted for the period after 1983, when the by-laws were declared *ultra vires* and police again attempted to counter street soliciting by using Criminal Code provisions. These increases in the early eighties may reflect an increasing reliance on procuring charges and bawdy house charges to replace the defunct soliciting law. Our study was designed to discover what occurred in the period after the last datum point on the graph.

Police activity in the five main field sites before C-49 is described to provide a background for the changes since December 1985.

1. *Halifax*

Between January 1976 and February 1984, a total of 49 prostitution-related charges were laid under the living-on-the-avails, procuring and soliciting sections of the Criminal Code; 24 charges of soliciting were laid in 1978-1980. After May 1980, no further charges were laid under section 195.1 because of the difficulties said to be associated with the Hutt[3] ruling.

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[1]Supra, Chapter I, note 5.

[2]Supra, Chapter I, note 2.

[3]Ibid.

In December 1982, the City of Halifax attempted to design a municipal by-law to prohibit street prostitution. Although 23 charges were laid using this by-law, none reached court because of a Supreme Court decision (R. v. Westendorp)[4] that found that a similar by-law in Calgary was beyond the jurisdiction of municipalities.

In 1984, the City of Halifax attempted a court injunction to restrain prostitutes from carrying out their activities downtown.[5] The injunction was refused by the Supreme Court of Nova Scotia on the grounds that it was an illegitimate method of controlling street prostitution and infringed on the federal government's role in enacting criminal law.

2. *Montreal*

In Montreal, the annual number of street prostitutes arrested under the street soliciting legislation fell dramatically from 338 in 1977 to six in 1981. Police attributed this decrease to the Hutt[6] decision. In 1980, the city adopted a by-law which prohibited street prostitution. It was used with some success until it was abandoned as a result of the Westendorp[7] decision in Calgary. In 1983, the City of Montreal passed another, more general by-law restricting all street vendors as well as prostitutes. This by-law did resist a higher court challenge and, in 1985, almost 1,200 charges were laid, presumably largely against prostitutes.

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[4](1983), 2 C.C.C. (3d) 330.

[5]The injunction attempted to restrain 48 known female prostitutes and "other persons unknown" from carrying out prostitution-related activities within a section of downtown Halifax.

[6]Supra, Chapter I, note 2.

[7]Supra, Chapter III, note 4.

3. *Toronto*

Police in Toronto continued to lay substantial numbers of soliciting charges after the Hutt[8] decision. It was not until the later higher court decisions further defined the meaning of "pressing and persistent solicitation" to exclude a single person making many overtures to different people that the Toronto police stopped using s. 195.1. The number of charges decreased from 622 in 1981 to four in 1984-1985. Between 1982 and 1985, police in Toronto tried to control street prostitution through various sections of the Criminal Code, including performing an indecent act, counselling to commit an indecent act, gross indecency, and the more general loitering and disturbance sections. The latter were not viewed favourably by the higher courts and police gradually ceased using them against street prostitutes.

4. *Calgary*

In the 1970s, police used a city by-law on loitering in conjunction with s. 195.1 to control street prostitution. When the by-law was struck down by the court in 1983 (Westendorp),[9] there was virtually no regulation of the street trade, according to the Calgary police. Three soliciting charges were laid in Calgary between 1980 and 1985.

5. *Vancouver*

Police report that, after the Supreme Court decisions in Hutt,[10] Whitter[11] and Galjot,[12] street prostitutes could no longer be controlled. In 1979 and 1981, task forces (special police initiatives) were instituted to charge street prostitutes and their customers

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[8]Supra, Chapter I, note 2.

[9]Supra, Chapter III, note 4.

[10]Supra, Chapter I, note 2.

[11]Supra, Chapter I, note 3.

[12]Ibid.

under various pieces of legislation, including Criminal Code sections, provincial legislation (such as the Motor Vehicle Act) and city by-laws. A 1982 municipal by-law prohibiting street prostitution ceased to be enforced after the Supreme Court of Canada ruled that a similar by-law was beyond municipal jurisdiction. Other efforts to control street prostitution included citizen measures, such as campaigns to shame customers and prostitutes, and a nuisance injunction obtained from the Supreme Court of British Columbia in 1984. Observers unanimously concluded that this latter tactic only succeeded in transferring the prostitution problem to new areas.

B. How Did Police Forces Implement Bill C-49 Law during the First Two Years?

This section describes how the new legislation was implemented by the police in the study sites. The questions to be addressed include:

> How was the law implemented by police? Were special units created? Were special policies developed? How were arrests made? What evidence was required by police to make arrests? Did the legislation impose additional costs on police? Did police forces recruit additional personnel?

At the proclamation of C-49 in December 1985, the new legislation was applauded by police forces and municipal officials across the country as the tool which would control street prostitution. It is noteworthy that in two cities -- Calgary and Halifax -- the law was inoperative for part of 1986 and 1987. In Calgary, no enforcement of s. 195.1 was undertaken between October 1986 and July 1987, as a result of a directive from the Attorney General to stop processing charges until the Alberta Supreme Court decided on the constitutionality of the law. The Court reversed a lower court ruling and found the law constitutional in July 1987. In Halifax, the law was in effect only until May 1987, when the Nova Scotia Court of Appeal ruled in R. v. Skinner[13] that it violated the freedom of speech and association rights in the Charter.

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[13](1987), 35 C.C.C. (3d) 203 (N.S.C.A.).

With almost no exceptions, police enforced subsection (c) of s. 195.1, "communication for the purpose of prostitution", rather than the subsections referring to stopping vehicles or impeding traffic. Bill C-49 is therefore referred to as the "communicating law".

1. *Halifax*

In Halifax, the legislation was enforced by the morality squad which had two male police constables. Policewomen were borrowed from other police units; male police trainees were also used to enforce the communicating law in order to avoid prostitute recognition of the decoy. According to the police, the implementation of C-49 resulted in minimal additional costs to the force.

Arrests were made by two police officers, one acting as a decoy and the second recording information from a separate location. The decoy was required to wear a body pack to electronically record the evidence in the discussion with the accused. A male undercover police officer acted as a customer when charging prostitutes, and two female officers acted as prostitutes when charging customers.

Enforcement of the prostitution legislation was ongoing during the period when the law was in force (December 1985 to May 1987). In May 1987, the legislation was found to be unconstitutional and police enforcement ceased. During that time, police gathered intelligence on the numbers, locations, and working relationships of the prostitutes and laid charges primarily in reaction to increased visibility and complaints from residents. In Halifax, police and Crown established three conditions to satisfy evidentiary requirements for an arrest: the communication of a dollar amount (price) for a specific sexual service, the proper identification of the accused, and the recording of the date and place of the offence.

Police in Halifax noted that the communicating section of the legislation (subsection (c) of s. 195.1) and the definition of automobiles as a public place were the two most useful sections of the law.

2. *Montreal*

In Montreal, the responsibility for enforcing s. 195.1 was shared by the Morality Division of the Montreal Urban Community (MUC) police and morality officers working in the districts affected by street prostitution. A total of 51 police officers working in different squads had duties that included enforcement of the street prostitution provisions. Indoor prostitution (escort services and massage parlours) generally took place off the island of Montreal and was policed by the Quebec Provincial Police.

While in the context of overall law enforcement in the city, prostitution was not a major priority, police regarded the new anti-soliciting law positively. In their view, the law gave them the opportunity to clean up the St. Laurent Boulevard area where female prostitutes worked, and Parc Lafontaine, where male hustlers operated. Police viewed street prostitution as causing both traffic problems and problems related to other criminal activity (such as drug dealing).

After some initial confusion about evidentiary requirements (e.g., who can initiate the conversation), police developed two methods of enforcement. The main method, which accounted for 90% of charges, was carried out using decoys -- undercover police officers who posed as customers or prostitutes. Police were required to prove that the suspect had discussed exchanging sexual services for money. Undercover police were advised (by the Crown) to remain passive and to avoid initiating conversations so as not to appear to be entrapping the accused. Police in Montreal initially used a body pack to record evidence; subsequently, written evidence by the officers involved was found to be sufficient.

About 10% of arrests were made in a different way -- by the surveillance method -- police observing a prostitute and her customer, following them to the scene of the crime, apprehending the couple in the act of sex, and subsequently obtaining a confession from the client. (If the customer made no statement, he was released, but the prostitute was charged on circumstantial grounds.) To satisfy evidentiary requirements for the surveillance method, police had to observe the prostitute during three or four discussions with prospective clients to prove that she was a prostitute.

Police strategies involved the use of blitzes, periods of intense police activity, to arrest prostitutes and customers. These periods usually lasted one day, and used all Morality Division officers assigned to prostitution. Blitzes were carried out regularly to maintain levels of arrests, as well as periodically in relation to special events in the city. A blitz was typically followed by publicity in local newspapers, in the hope of deterring both newcomer prostitutes and clients. In addition to the blitzes and routine enforcement, uniformed police gathered intelligence about the prostitution scene and warned customers and prostitutes about their behaviour.

Unlike other police forces participating in this research, the Montreal police established policy objectives concerning the number of charges to be laid against prostitutes and customers. Also, individual police officers on some morality details were expected to meet objectives on a weekly basis. Monthly statistics on the charges laid were routinely monitored by the force.

Police in Montreal stated that sub-section (c), the communicating section of Bill C-49, was the only section of the legislation that was enforceable, the other sections being regarded as imprecise and very difficult to prove.

According to Montreal police, the enforcement of C-49 required no organizational changes and minimal additional costs, although minor inconveniences did exist. The scarcity of female officers in the Morality Division made it necessary to borrow policewomen from other sections of the force. The requirement that two police

officers testify as witnesses in court entailed some additional costs. Overall, however, the legislation was seen by police as a positive and unproblematic measure.

3. *Toronto*

The Morality Bureau and divisional staff of the Toronto police shared responsibility for enforcement of s. 195.1. In the Morality Bureau, about 20 officers were responsible for organizing, supervising and processing persons charged in the sweeps. Sweeps were large-scale police initiatives that targeted customers or prostitutes in the prostitution areas of the city. In addition to sweeps, ongoing enforcement of s. 195.1 was undertaken on a routine basis by plainclothes officers in Morality and in the affected divisions. Sweeps required considerable police time in Metro and involved borrowing personnel from divisions throughout the city. A typical sweep of female prostitutes in Toronto involved about 40 officers and 20 unmarked and rental cars as well as "wagons" to process those charged. Sweeps of customers sometimes required additional personnel, as at least two back-up officers were necessary for each undercover female officer acting as a decoy prostitute.

In Toronto, all charges under s. 195.1 involved the use of undercover police officers acting as decoys. In addition, each police division in the prostitution areas had its own methods of monitoring the prostitution scene, such as foot patrols and spot checks of working prostitutes and their customers.

Meetings between police and Crown established that the evidence needed to prove "communication" required that the prostitute or customer communicate a price or a sex act to an undercover officer. Officers also preferred to obtain evidence that the person intended to carry out the act. In most cases, the officer would identify himself after the prostitute had entered his car and they had driven away, usually to a nearby command post. He would be followed by a back-up who would assist in the arrest. In a minority of cases, the undercover police officer would gather the details of the communication and leave, and a back-up officer would make the arrest. When a

customer was targeted, female decoys would not enter the customer's car. After obtaining sufficient evidence, but before the customer would drive away, they would signal to their back-up officers to assist in the charge process. Police had been advised by the Crown to play as passive a role as possible to avoid appearing to entrap prostitutes or customers.

Enforcement of the street prostitution legislation was labour intensive and costly according to the Toronto police. The following changes were said to have resulted from Bill C-49:

- the organization and implementation of large-scale sweeps of prostitutes and customers by the Morality Bureau, with personnel provided by divisions throughout the city;
- the development of a task force to clear prostitutes from the Lakeshore West area of Toronto;
- as a result of pressure from citizens, the addition of 90 foot patrol officers in 1987-1988 to the staff of the Metro Toronto police to walk the beat in areas affected by street prostitution.

The estimated costs of controlling street prostitution were provided to the Board of Police Commissioners by the police. In 1987, 32 full-time officers were necessary. Their expenses, including salaries, overtime and equipment rental, amounted to $1,835,680. The cost of adding 90 foot patrol officers was estimated at $4,500,000 in 1988.

4. *Calgary*

In Calgary, the sole responsibility for administering s. 195.1 rested with the Vice Unit. This Unit, which was responsible for the control of Asian crime gangs, gambling, and prostitution, was made up of 10 male detectives and a staff sergeant. Four officers were assigned to prostitution. Calgary police initiated periodic "stings" to arrest prostitutes and customers. Similar to sweeps or blitzes carried out in other Canadian cities, these initiatives targeted male and female prostitutes and customers. As in other

cities, undercover police officers were employed to intercept public offers of sex for money in the streets.[14]

In the case of stings against female prostitutes, four or five undercover policemen driving in unmarked vehicles approached different prostitutes on the stroll.[15] To arrest customers, policewomen decoys worked with a body microphone which transmitted a signal to an undercover unit recording the conversation. After the female decoy refused the offer from the customer, the latter was pulled over by uniformed officers a few blocks away.

Stings were complemented by the work of uniformed police who actively maintained a file identifying all female prostitutes. When the police saw a prostitute not known to them, they would ask her to accompany them to be photographed and to have identification checked. Prostitutes in Calgary routinely agreed with this request because of their good relationship with police and because they believed police would more easily find them should they disappear. In addition, police maintained regular observations of the prostitutes on the strolls.

The research in Calgary suggested that enforcement of s. 195.1 was designed less to clear the street of prostitutes than to establish some degree of control.[16]

5. *Vancouver*

Bill C-49 was enforced by the Vice Unit in Vancouver. Rather than rely solely on periodic initiatives, the practice in the Vice Unit was to conduct ongoing arrests from

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[14]The Vice Unit in Calgary borrowed females from other units to arrest customers.

[15]They picked up the women and drove to designated areas to carry out their arrests.

[16]Notwithstanding a period from October 1986 to July 1987 when the legislation was not being enforced, there were four major stings or arrest periods in 1986 and one in 1987. One hundred and forty-nine charges were laid against 134 different persons -- a relatively small number in relation to other cities in the research program.

Monday to Friday. Seven officers devoted most of their time to policing street prostitution. They would work in two teams, with one team apprehending prostitutes and the other customers. Three detectives who were regular members of the Vice Unit and four constables, one of whom was a policewoman, made up the two teams. The regular rotation of constables into the Unit ensured that there was a constant supply of new faces to act as decoys. In charging customers, an undercover policewoman posed as a prostitute, while one constable and one detective acted as back-ups; the female officer would be in radio and visual contact with her back-up team at all times. For prostitutes, one undercover officer would pose as a customer, while a constable and detective would act as back-up. After the suspect had entered the decoy's car and provided the necessary evidence, the officer would signal his back-up. The decoy car would be stopped and the customer segregated from the prostitute, who would not be told that the customer was a police officer.

In addition to the Vice Unit, a task force was created for six months in the summers of 1986 to 1988 to reduce street prostitution in the residential area of Mount Pleasant. In 1987, seven full time officers used constant police presence and traffic and other public order laws, as well as direct confrontation with prostitutes and customers, to attempt to move street prostitution activity from the residential area. According to the Vancouver research, the task force was seen as a successful proactive effort. It should be noted, however, that the Mount Pleasant Task Force did not prosecute persons for s. 195.1 offences.

With one exception, all charges of street prostitutes and customers in Vancouver were laid under subsection (c), the communicating clause of the legislation. As in other parts of the country, the other sections of the law were seen by police and Crown as unenforceable.

Evidentiary requirements for a successful arrest and prosecution under s. 195.1 in Vancouver required three essential elements: communication had to take place; the communication had to involve sex for money; and it had to occur in a public place.

According to Vancouver police, enforcement of the legislation was costly and labour intensive. Figures from the Vancouver Police Department showed that for a six-month period in 1987, $196,548 in salaries, court time and vehicle rental was required to enforce s. 195.1. The 1987 Mount Pleasant Task Force was estimated to cost about $160,000 for its six months of operation. Extrapolating from these data, over half a million dollars were spent by the Vancouver police to control street prostitution in 1987.

6. *Discussion*

There are many similarities in the way C-49 was implemented by police forces across the country; there were also remarkable differences. Some comparisons are made in this section; others will be discussed throughout the report.

In all jurisdictions, the mandatory requirements for successful prosecution of a case using the s. 195.1 provision were that there had to be a verbal or other exchange, whereby a sexual service or a price was named by the suspect.[17] In addition, the exchange had to take place in a public place. To obtain this information, police departments used decoys, plainclothes police officers posing as prostitutes or customers on the street. The enforcement of the legislation was often coordinated or carried out by the morality or vice bureau. These ranged in size from two men in Halifax to about 20 men and women in Toronto. Both the lack of female detectives in many of the morality sections, and the small size of the units, required that police officers, especially women, be borrowed from other divisions. In addition, in some cities, such as Halifax and Vancouver, enforcement of the legislation meant that police were rotated among sections to avoid their recognition by prostitutes.

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[17]A number of strategies, largely unsuccessful, were used by accused persons to avoid prosecution: "you can get a slice of pizza for $20, half a pizza for $40, and the whole pizza for $60." Courts have accepted non-verbal communication: a hearing- and speech-impaired hustler in Toronto was convicted after pleading guilty to non-verbally indicating a sexual service and a price to an undercover police officer.

Typically, male police officers approached prostitutes on the street, engaged them in conversation, and attempted to manipulate the discussion in such a way that the prostitute mentioned the price of a sexual service, the service itself, or both. The male decoys often used rental cars rather than unmarked cars to avoid being recognized as decoys. The decoy may or may not have identified himself to the prostitute as a police officer. In some cities, and on some occasions in most cities, the actual charging process was undertaken by a back-up officer. On these occasions, the suspect was not aware that her customer was a police officer.

Policewomen decoys would stand in known stroll areas and wait for potential customers to proposition them. Once evidence of a communication had been obtained, the policewoman would signal her back-up who would either approach the customer immediately or pull his car over a few blocks away.

Electronic evidence was essential only in Halifax, and a malfunction of the bodypack which was used to record conversations sometimes led to charges being dropped. In other cities which used "wired" officers (such as Calgary and Niagara Falls), only conversations between policewomen and potential customers were recorded. This was done both because of the perceived need to protect the policewoman, and also to make it easier for her to supply the required evidence against the customer. To avoid any appearance of entrapment, police decoys generally were advised to assume a passive role in making arrests and to attempt to make the suspect do most of the talking.

While decoys were the primary means of charging, the surveillance method, which involved following the customer and the prostitute and obtaining a statement from the customer, was used in some cases in Montreal and Ottawa. While this practice is time consuming because of the need to provide sufficient evidence that the person is a street prostitute and to follow her after a customer has been obtained, it does obviate the need for policewomen decoys to charge heterosexual customers, and could have been undertaken by officers who were well known to prostitutes working the strolls.

There were two major approaches to enforcing s. 195.1 in the sites studied. One was the use of short periods of intense police activity known as sweeps, blitzes, or stings. These efforts, designed to secure large numbers of arrests, targeted specific groups -- customers, female prostitutes, male prostitutes -- and equalized the arrest ratio of males and females. The arrests were then highlighted in local media. These initiatives were also used in a reactive way after police received complaints from residents or merchants about specific nuisances from street prostitutes.

The second enforcement strategy involved routine or ongoing policing. In this case morality or vice squad divisions, with help from divisional police, made regular weekly arrests. This continuing enforcement was used to mount steady pressure on the trade. In some cities, police believed that both methods were necessary, as blitzes and their ensuing publicity deterred customers, while ongoing enforcement prevented prostitutes from simply "laying low" and resurfacing after a few days.

In both strategies, uniformed police on foot and in cruisers would patrol the streets and spot-check prostitutes. They would verify their identity and check to see if the prostitute was in violation of court-ordered restrictions. Routine checks were also used to develop intelligence -- names, addresses, relationships to pimps and others -- on the prostitute working the street.

Although s. 195.1 is a summary conviction offence, most of the morality or vice bureaus maintain files containing photographs of street prostitutes.[18] These photographs were usually taken by police at the time the prostitute was charged. Police suggested that the photographs assisted in identifying prostitutes in cases of injury or death, controlled the presence of juveniles, and maintained intelligence on the street scene.

In the two cities where public concern was the greatest -- Vancouver and Toronto -- police formed special task forces to deal with specific areas of street prostitution. In

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[18]Photographing the accused is not permissible in summary conviction cases.

Vancouver, laws other than s. 195.1, combined with constant police presence and harassment of prostitutes and their customers, were used by the Mount Pleasant Task Force. In Toronto, the communicating law as well as petty trespassing notices were used to clear prostitutes working from the Lakeshore motel strip in the east end of Metro Toronto. In both cities, these efforts were viewed as effective by the community.

Other than the development of temporary task forces in two cities, no major structural changes in police forces were required to implement s. 195.1. However, this is not to say that there were no organizational changes since the introduction of the new law. The organization and coordination of the large-scale initiatives required manpower and other reallocation of resources in those cities that used the sweep or blitz tactic. In many cities, uniformed patrol officers were extensively used to establish "police presence" in prostitution strolls, to obtain information on the street workers, to check for breaches of court orders, and to discourage customers. In Toronto, continued complaints from citizens regarding the ineffectiveness of s. 195.1 in ridding the streets of prostitutes resulted in approval for the addition of 90 foot patrol officers to the staff complement of the Metropolitan Toronto Police Force.

The researchers asked police departments to estimate the cost of implementing Bill C-49. Some departments, (as in Montreal and Halifax) stated that the costs were minimal. Cost estimates were provided only by Vancouver and Toronto: in 1987, Vancouver costs were estimated at $400,000, excluding the costs of the Mount Pleasant Task Force, which was only indirectly concerned with s. 195.1 enforcement; in the same year in Toronto, $1.8 million were said to have been spent directly on s. 195.1 (excluding the salaries of the additional foot patrol officers, and the Lakeshore task force).

Police encountered some common problems in implementing the law:

- The relatively small number of morality or vice officers available to act as customer decoys, particularly in smaller cities. This necessitated the use of disguises (in some cities), and the loan of officers from other sections of the force, in order to maintain the anonymity of the decoys.

- The need to borrow policewomen to act as prostitute decoys from other sections of the force. Most police departments had very few women plainclothes officers (this point is discussed further below).

- The inability to fingerprint prostitutes. Because many prostitutes carry no identification, and lie about their identity, police found it difficult to ascertain the prior record of accused persons, and to monitor bail and probation orders. Police also suggested that a large number of "fail to appears" are a consequence of the inability to verify the identity of prostitutes.

In summary, most police forces regarded the amended s. 195.1 as a relatively easy law to implement. However, some forces found enforcement to be expensive, because of the necessity of relying on undercover police officers and rental vehicles.[19]

C. What Was the Number of Charges Laid by the Police and the Identity of the Persons Charged (Prostitute or Customer, for Example)?

One purpose of the amended s. 195.1 was to clarify earlier confusion as to whether the section applied to prostitutes' customers as well as to prostitutes themselves. In this section, we first present the number of charges laid by police in study sites, followed by a discussion of the inter-city differences in the way the law was applied against prostitutes and customers, and female and male prostitutes.[20]

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[19]This situation will be discussed further in the conclusion of the report.

[20]Although not an explicit objective of Bill C-49, a discussion of the extent to which male prostitutes were charged is a logical extension of the "equal application" objective.

TABLE 1[21]

CHARGES LAID BY THE POLICE UNDER S. 195.1 IN 1986 AND 1987 IN SELECTED CITIES STUDIED*

	1986	1987	Percentage Change	Total
Vancouver	760	1,420	+87	2,180
Calgary	(93)	(56)	n/a	149
Regina	303	352	+16	655
Winnipeg	205	85	-59	290
Toronto	1,533	3,835	+150	5,368
Ottawa	126	(188)	n/a	314
Niagara Falls	106	(91)	n/a	197
London	34	65	+91	99
Montreal	1,621	2,335	+44	3,956
Trois Rivières	17	0	--	17
Quebec City	82	(38)	n/a	120
Halifax	106	(36)	n/a	142

* These statistics are taken from the different field site evaluation reports.

Notes: n/a = information not available

\- Percentage changes cannot be calculated because the data do not represent a full year of enforcement. In Calgary, the law was not enforced between November 1986 and July 1987, while its constitutional status was in question. In Ottawa and Niagara Falls, data only for the first 10 months of 1987 were available. In Halifax, the law was not enforced after May 1987. The 1986 data include one case where an "intermediary" was charged. The 1987 Quebec City data represent charges laid until June 4, 1987. No charges were laid in St. John's, Newfoundland, between December 1985 and August 1987.

Table 1 shows the number of charges laid by police departments in the cities involved in this research. The time periods for which data were available differ somewhat: full-year data were not available for 1987 for Ottawa, Niagara Falls and

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[21]Percentages in tables have been rounded off and therefore do not always total 100%.

Quebec City; in Calgary, the law was not enforced for about two months in 1986 and seven months in 1987; in Halifax, the Skinner[22] decision by the Court of Appeal resulted in no prosecutions after May 1987.

The last column of Table 1 shows that the three largest cities -- Toronto, Montreal and Vancouver -- accounted for the very large majority of charges laid under s. 195.1. Also in these cities, there were substantial increases in the number of charges laid in 1987 compared to the first year of the law. These increases may reflect an increase in the police allocation of resources to the phenomenon of street prostitution, resulting from continuing public concern about the magnitude of the problem.

[22]Supra, Chapter III, note 13.

TABLE 2

MEAN COUNTS OF PROSTITUTES IN FIVE CITIES COMPARED TO THE NUMBER OF CHARGES LAID UNDER S. 195.1

	Mean Number of Prostitutes Observed*	Number of Charges Laid
Vancouver	55	1,420 (1987)
Calgary	55	93 (Jan. - Sept. 1986)
Toronto	51	3,835 (1987)
Montreal	34	2,335 (1987)
Halifax	8	105 (1986)

Notes: * Note that the mean counts represent the number of prostitutes counted by the researchers at one time; they do not represent the total number of prostitutes working in the cities at one time.

- In Vancouver, the mean represents the average observed on Thursday nights in June 1987 between 10 p.m. and midnight.
- In Calgary, the mean is the average number of prostitutes working on Thursday, June 18, between 10 p.m. and midnight.
- In Toronto, the mean is the average number of prostitutes working on Thursdays in June and July, 1987, after 9 p.m.
- In Montreal, the mean is the average number of prostitutes working on Thursday, May 28, between 10:30 p.m. and 10:30 a.m.
- In Halifax, the mean is the average number of prostitutes working on Thursday, June 26 between 10 p.m. and midnight.

Table 2 compares the number of charges laid in the five major study sites to the average number of prostitutes observed to be working the streets during peak evening hours in the summer of 1987. These "head counts" are an indicator of the visibility and presumably also the extent of the nuisance associated with street prostitution. They illustrate that the size of the city is not necessarily a measure of the size of the "prostitution problem". Both Vancouver and Calgary have a much smaller population than Toronto, but all three cities had similar levels of observable street prostitution in the summer of 1987. Toronto and Montreal are approximately equal in size but in the

former, more persons were observed working the streets than in Montreal.[23] However, of the five cities, Halifax had both the smallest population and the smallest number of prostitutes observed at one time.[24]

Table 2 also illustrates the difference in policing levels in relation to the number of street prostitutes. The difference is most apparent when Calgary is compared to the other cities. In Calgary, where the policy appeared to be one of containment of most female street prostitution in one central, non-residential area in the city, only 93 charges were laid in the first nine months of 1986, compared to over 1,300 in Vancouver in 1987. Although Montreal had about one-third fewer visible prostitutes than Vancouver, Montreal police laid about 1,000 more charges than did the Vancouver police in 1987.

These data suggest that police resources (for example, personnel) and police policies on the allocation of these resources may have been more closely related to the charging levels than the size of the phenomenon and the associated nuisance factors. It is possible, too, that police responded to the concerns expressed by merchants and residents in areas frequented by street prostitutes and their customers. Of the cities studied, it is clear that Toronto police enforced the communicating law with the greatest vigour; in 1987, Toronto had more charges than Vancouver and Montreal combined. Vancouver and Toronto citizens were most vocal in their dissatisfaction with the continued presence of street prostitution. In contrast, the research in Calgary found that the situation aroused little public concern and few requests for action by the authorities.

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[23]Later in the summer of 1987, the Toronto-Montreal difference had slightly increased; in August, the mean number of prostitutes working at one time in Toronto was 65 and in Montreal, it was 39.

[24]Observations in Halifax were done one month after the high court decision overturning ss. (c) of s. 195.1(1). Observations conducted in August, about two months later, found that the average number of prostitutes on a Thursday evening had increased to 16.

1. *Equal Application of the Law to Prostitutes and Customers*

As has been noted, the new s. 195.1 was expected to remedy some of the problems of the former s. 195.1 by reducing major inequities in enforcement. Critics of the former s. 195.1 had noted that, historically, the legislation penalized only one party, the prostitute, in what was a two-person transaction. Female prostitutes, who are usually seen as the more disadvantaged participants, were expected to bear the full legal condemnation, while customers were untouched.

Interviews with police forces across the country suggest that police were aware of the objective, which would ensure equality of treatment in the arrest of prostitutes and customers.

TABLE 3

THE PROPORTION OF PROSTITUTES AND CUSTOMERS CHARGED IN 10 CITIES UNDER S. 195.1

	Van.	Cal.	Wpg.	Tor.	Ott.	N.F.	Lon.	Mtl.	Que.	Hal.
Prostitutes (%)	76	83	70	(55)	74	62	41	65	60	82
Customers (%)	24	17	30	(45)	26	38	59	35	40	18
Total Percentage	100	100	100	100	100	100	100	100	100	100
Total Number of Charges Laid	2,180	149	290	5,368	314	197	65	3,956	120	141

Notes: - Vancouver, Winnipeg and Montreal data are for 1986-1987. The remainder are for shorter time periods.
- Toronto proportions are estimates, based on a random sample of s. 195.1 cases selected by the researchers, rather than official police statistics.

Table 3 shows the proportion of s. 195.1 charges in most of the study sites involving prostitutes and customers. The law was most equally applied in Toronto[25] and

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[25]The Toronto data are an estimate based on a sample of cases; official police statistics on the percentage of customers charged were not made available for the 1986-1987 period.

London, Ontario: that is, about one-half of the charges laid involved customers. Between 30% and 40% of charges in Winnipeg, Niagara Falls, Montreal and Quebec were laid against "johns". In Vancouver, Calgary, Ottawa and Halifax, customers represented one-quarter or fewer of the charges laid.

A variety of organizational factors contribute to an explanation for the differential rates of prostitutes and customers who have been charged. First and most importantly, in many police forces the number of experienced policewomen able or willing[26] to act as prostitute decoys was limited. In addition, police have indicated that the personnel needed to charge customers was greater than that required to charge prostitutes, because the policewomen decoys required more back-up personnel for their protection on the street and in their discussions with prospective customers. It was also suggested that policewomen cannot lay as many charges per shift as male decoys, because they cannot proactively approach customers, as can male decoys with prostitutes.[27] The risk of violence against female officers has also been cited as a reason for the lower level of enforcement against customers.

2. *Application of the Law to Female and Male Prostitutes*

In most cities, police acknowledged that male prostitutes were less frequently charged than females and that the customers of male prostitutes were virtually left alone. Police explained that male prostitution is a relatively small phenomenon, often not distinguishable from gay cruising and therefore less of a nuisance than female prostitution. They explained further that male prostitutes were often young and operated in a tightly knit community which was almost impenetrable. An alternate

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[26]Some forces rely on policewomen to volunteer for prostitute decoy duty.

[27]This argument may not consistently hold true. While more back-up officers are often required for policewomen, it usually takes officers more time to process prostitute charges. Customers are usually released almost immediately after their identity has been verified; prostitutes are more likely to be investigated as to their name and prior record, and perhaps detained overnight (see Table 4).

explanation offered by some members of the police community and other respondents was that the homosexual prostitution trade has been left alone because police are generally uneasy about homosexuality -- and especially about posing as male prostitutes or customers.

As Table 4 shows, in Vancouver, Winnipeg and Toronto, 8% or fewer of the communicating charges laid against prostitutes involved men (or boys). The proportion was somewhat higher in Calgary and Halifax (12% and 11%, respectively). Of the major study sites, Montreal shows the largest percentage of male prostitutes charged (27%).

TABLE 4

THE PROPORTION OF MALE AND FEMALE PROSTITUTES CHARGED UNDER S. 195.1

	Vancouver	Calgary	Winnipeg	Toronto	Montreal	Halifax
Male Prostitutes (%)	8	12	4	(5)	26	11
Female Prostitutes (%)	92	88	96	(95)	73	89
Total Percentage	100	100	100	100	100	100
Total Number of Charges Laid Against Prostitutes	n/a	123	202	2,254	2,573	116

Notes: n/a = information not available

- In most cities, transvestite/transsexual prostitutes are included as "female prostitutes". In Toronto, the proportion of male prostitutes charged by the police is an estimate based on a sample of charges laid in Toronto. Official police statistics for nine months in 1987 show that 10% of prostitutes charged were "male"; however, it is unclear whether this proportion includes transvestites.

These data are difficult to interpret without knowing the extent of male prostitution in the sites. One method[28] of estimating this is to determine the proportion of males observed during the "head counts" of prostitutes undertaken by the researchers in the summer of 1987. These proportions can then be compared to the proportion of prostitute charges involving men. In the following cities, male prostitutes appear to be underrepresented in the charge statistics:

- In Calgary, 12% of prostitution charges involved males, and 18% of the prostitutes identified in head counts were males.
- In Toronto, an estimated 5% of all prostitution charges involved males, but about 25% of the prostitutes counted were men.
- Only 11% of prostitution charges in Halifax were laid against males, but about 33 1/3% of prostitutes observed during the head counts were men.[29]
- In Vancouver, about 8% of charges involved males, but 10% of observed prostitutes were men.

The exceptions to this are found in Montreal where male prostitutes were charged in higher proportions than females, when compared to the proportion of males on the street. Study estimates in Montreal suggest that just less than 20% of prostitutes working at any one time were male; however, 27% of the charges laid against prostitutes involved men.

D. How Were Persons Who Were Charged Processed? What Were Police and Court Practices With Regard to Pre-Trial Detention, Pleas and Conviction Rates?

The objective of this section is to describe the way in which cases of "communication for the purposes of prostitution" were dealt with by the criminal justice

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[28]A preferable method would be to determine the actual number of male and female street prostitutes working in the study cities; however, these data do not exist.

[29]The proportion of male prostitutes working in Halifax appears to be high because, at the time of the research, there were relatively few women observed working on the streets.

system in the five study sites. In earlier sections, we have described the number of persons charged under s. 195.1 and their actor status. In this section, we address the subsequent stages of police and court processing -- pre-trial detention, the number of court hearings, the nature of the pleas made by accused and conviction rates. These decisions by the police, the defendant and the court have the potential for a substantial impact on both the accused person and the system itself.

1. *Pre-Trial Detention*

Detaining accused persons has implications for both the individual and for the criminal justice system. Being placed in custody not only incapacitates the person, but may negatively affect his or her family. The use of pre-trial detention can have an effect on bedspace in custodial facilities, particularly those for women.

In most sites, persons charged under s. 195.1 who were not held for bail court were released on the street with an appearance notice.

In some cities, detention upon arrest was used as a control measure by the police. In Vancouver at some periods, prostitutes and customers were routinely detained at arrest. Police then asked for area restrictions from the court in order to minimize the likelihood that the accused prostitute would return to his or her stroll after release from detention. This blanket policy of routine detention was abandoned after a B.C. Court of Appeal decision (R. v. Pithart)[30] stated that the practice infringed on s. 9 of the Charter (regarding arbitrary detention). This policy of arresting all suspects lasted between May 1986 and February 1987; analysis of police and court data found, however, that not all persons charged during that period were held for a bail hearing, and prostitutes were much more likely to be detained than were customers. In Toronto, the practice of routinely detaining substantial numbers of prostitutes was stopped after some provincial court judges expressed disapproval of the practice.

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[30](1987), 34 C.C.C. (3d) 150 (B.C.C.A).

A practice which found considerable favour in Montreal was the use of area restrictions for prostitutes placed on bail or probation. Police would maintain photos of prostitutes not permitted in stroll areas, and this practice was said to provide a valuable control measure. In the summer of 1987, 125 prostitutes were restricted in this way. Police believed that at least 50% of the prostitutes respected these conditions and they attributed diminution of prostitution in certain areas to this practice. Some displacement into other areas was noted.

Pre-trial detention differed among sites: no one was detained in Halifax; 15% of persons charged were held in Calgary; 18% in Toronto; 33% in Montreal; and about 60% in Vancouver (Table 5). These figures are somewhat misleading, however, as there are large differences in detention rates for prostitutes and customers. Fewer than 4% of customers in Montreal, 2% in Toronto, and 25% in Vancouver were held for a bail hearing. In Calgary, none were held. In contrast, over 25% of prostitutes in Toronto, about 50% in Montreal, and almost 75% in Vancouver were held by police.

TABLE 5

PRE-TRIAL DETENTION IN FOUR SITES

	Prostitutes	Customers	Total
Vancouver			
Released with an Appearance Notice (%)	25	67	36
Detained (%)	74	25	61
Other(%)	1	8	3
Total Percentage	100	100	100
Total Sample	230	79	309
Calgary			
Released (%)	83	100	85
Detained (%)	17	0	15
Total Percentage	100	100	100
Total Number	123	26	149
Toronto			
Released with an Appearance Notice (%)	67	96	78
Detained (%)	29	2	18
Other (%)	4	2	3
Total Percentage	100	100	100
Total Population Estimate	2,259	1,534	3,793
Montreal			
Released (%)	51	96	67
Detained (%)	49	4	33
Total Percentage	100	100	100
Total Sample	175	95	270

A prostitute-customer difference in detention rates is not necessarily an indication of discriminatory treatment of prostitutes. Section 195.1 is a "found committing" offence (s.450[2] of the Criminal Code). Police cannot arrest a person caught "communicating" in a public place unless the officer believes that it is necessary to "establish the identity of the person" or to "prevent the continuation or repetition of the offence". Many prostitutes did not carry identification, thus opening the way for arrest without warrant (and probably pre-trial detention unless they are released by the station sergeant or the

Justice of the Peace). Prostitutes were also much more likely than customers to have been charged with communicating before, thereby giving the police reason to arrest to prevent them from continuing to work on the street.

Nonetheless, there is evidence in some sites (such as Vancouver) to suggest that prostitutes were disproportionately detained, even when prior offence history was taken into account. Almost 70% of prostitutes charged with a s. 195.1 offence for the first time were held for a bail hearing, compared to 25% of the customers (all of whom were first offenders).

2. *The Number of Court Hearings*[31]

The number of court appearances required to conclude a criminal case has a bearing on the workload of the courts, especially in cities where a large number of charges have been laid. Approximately one-half of communicating cases in Montreal and Halifax were dealt with in one hearing, whereas in Vancouver, only 10% of charges ended after one appearance. Toronto fell between these extremes, where 35% of all communicating cases were dealt with in one hearing.

The number of hearings for prostitutes and customers separately is available for Vancouver, Toronto and Montreal. Montreal prostitutes experienced the shortest court processes -- 37% of the processes ended after one appearance and 28% required four or more hearings. Of the prostitutes in all three sites, those in Vancouver had the longest hearing process: very few of the processes (3%) were completed after the first hearing, and in almost 60% of the cases, there were four or more hearings. In Toronto, 24% were completed after one hearing and 42% after four or more.

Perhaps because customers were much less likely to plead not guilty than the prostitutes, in three locations they had much briefer exposure to the court than did

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[31]Data on the number of hearings are not available for Calgary.

prostitutes. In both Toronto and Montreal, only 6% of customers had four or more hearings, and in Vancouver, 28% did so. A very large majority (73%) of Montreal customers had only one hearing. At the other end of the scale, only one-third of cases against customers in Vancouver ended at the first appearance.

Unfortunately, there are no comparable data on the length of the court process in the cities under discussion for other summary conviction charges. The data do suggest, however, that prostitutes' cases in the cities where a high volume of charges were laid may have burdened the workload of the provincial courts. Perhaps the main conclusion to be drawn from the "number of hearings" analysis is that charged prostitutes must appear more often in court and are therefore more inconvenienced than their customers.

TABLE 6

THE NUMBER OF COURT APPEARANCES IN FOUR SITES

	Prostitutes	Customers	Total
Vancouver			
1 Hearing (%)	3	34	10
2-3 Hearings (%)	39	38	38
4+ Hearings (%)	59	28	52
Total Percentage	100	100	100
Total Sample	260	79	339
Toronto			
1 Hearing (%)	25	51	35
2-3 Hearings (%)	34	43	38
4+ Hearings (%)	42	6	27
Total Percentage	100	100	100
Total Population Estimate	2,104	1,529	3,633
Montreal			
1 Hearing (%)	37	73	50
2-3 Hearings (%)	35	21	30
4+ Hearings (%)	28	6	20
Total Percentage	100	100	100
Total Sample	175	95	290
Halifax			
1 Hearing (%)	n/a	n/a	56
2-3 Hearings (%)			41
4+ Hearings (%)			3
Total Percentage			100
Total Number			142

Note: n/a = information not available

3. *Failure to Attend Court*

One recurring problem reported by police departments in cities where street prostitutes worked in substantial numbers was the proportion of bench warrants arising from prostitutes' failure to attend court as required. Failure to attend court can occur for many reasons, ranging from simple forgetfulness, to "judge shopping", to a desire to

avoid prosecution. Law enforcement officials, especially in Toronto and Vancouver, claimed that the last reason is most common. They suggested that the inability of police to fingerprint prostitutes and hence establish their identity was a major cause of "fail to appears". This is a major reason why many police departments have asked for s. 195.1 to be made a hybrid or dual procedures offence, which according to the Criminal Code would then permit them to fingerprint prostitutes.

In all sites, relatively few customers failed to attend court. The failure rate of prostitutes was, as expected, much higher: 16% in Halifax;[32] 20% in Vancouver; 27% in Montreal; 10% in Calgary and 38% in Toronto.[33] Also in Calgary, about 23% of those detained after arrest were held due to outstanding warrants. Therefore, in the five sites studied, approximately one-fifth of the prostitutes were issued bench warrants as a result of failure to show up in court.[34]

4. *The Nature of Pleas Made*

The plea made by the accused has major ramifications for court processing and case outcome. A guilty plea usually means that the person is dealt with quickly, with the sentence often handed down at the same hearing where the plea is made. A not guilty plea, however, means that the case is adjourned to set a date for trial and to obtain legal representation for unrepresented persons; in some instances, a full-blown trial with prosecution and defence witnesses is the result. Obviously, the not guilty plea opens the way for a dismissal, a finding of not guilty by the court and (sometimes) the withdrawal or other termination of the charge by the Crown. "No plea" can occur in a variety of

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[32]"Pending" charges in Halifax (N = 19) were all cases where the accused failed to attend court.

[33]These data are not directly comparable. For Halifax and Toronto, outstanding cases were included in the totals, while for Vancouver and Montreal, they were excluded. In Vancouver at least, the failure to appear rate would be higher if outstanding cases had been included in the sample.

[34]Data are not shown in table form.

circumstances, such as when the accused pleads guilty to other charges and has the communicating charge withdrawn, or when there is insufficiency of evidence.

Data on first pleas are available for Montreal and Halifax (see Table 7).[35] In both cities, customers were more likely than prostitutes to plead guilty. Indeed, 23 of the 25 Halifax customers (92%) pleaded guilty at their first appearance, in comparison to about one-half of prostitutes. In Montreal, the percentages pleading guilty were 73% (customers) and 47% (prostitutes). In both cities, about one-half of the prostitutes made a first plea of not guilty.

TABLE 7

THE NATURE OF THE PLEA MADE AT FIRST APPEARANCE IN MONTREAL AND HALIFAX

	Prostitutes	Customers	Total
Montreal			
Guilty (%)	47	72	56
Not Guilty (%)	53	27	44
Total Percentage	100	100	100
Total Sample	159	91	250
Halifax			
Guilty (%)	54	92	62
Not Guilty (%)	46	8	38
Total Percentage	100	100	100
Total Number	93	25	118

Information on final pleas is available in Calgary (for all charges) and in Vancouver and Toronto (for prostitutes and customers separately).[36] Toronto and Calgary showed similar distributions in overall pleas: of defendants whose cases were

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[35]In Halifax, in 18 of the 46 cases where the person pleaded "not guilty", the plea was later changed to guilty.

[36]In Halifax, about one-fifth of all those accused made a final plea of not guilty, and about three-quarters made a final plea of guilty.

resolved, less than one-tenth made a final plea of not guilty, and about three-quarters pleaded guilty (Table 7). However, those charged in Calgary were somewhat more likely than those in Toronto to register no plea, as a result of, for example, withdrawals or quashed charges. In Vancouver, the situation was markedly different -- almost four times as many of the accused made a final plea of not guilty as compared to Toronto, and ten times as many as in Calgary. In Vancouver, there was no difference between prostitutes and customers, whereas in Toronto prostitutes were slightly more likely to make no plea[37] than were their customers.

[37]In Toronto, 16% of prostitutes and 4% of customers had their charges terminated prior to adjudication (they were not convicted). The number of withdrawals is largely explained by the practice of withdrawing the "communicate" when the prostitute pleads guilty to other charges, such as violating bail or failing to attend court.

TABLE 8

THE NATURE OF THE FINAL PLEA MADE IN VANCOUVER, CALGARY, TORONTO AND MONTREAL

	Prostitutes	Customers	Total
Vancouver			
Proceedings Halted ("No Plea") (%)	6	9	6
Guilty (%)	56	57	56
Not Guilty (%)	38	34	37
Total Percentage	100	100	100
Total Sample	247	79	326
Calgary			
No Plea (%)	n/a	n/a	21
Guilty (%)			71
Not Guilty (%)			9
Total Percentage			100
Total Number			58
Toronto			
No Plea (%)	15	4	10
Guilty (%)	77	84	80
Not Guilty (%)	8	11	9
Total Percentage	100	100	100
Total Population Estimate	1,922	1,487	3,279
Montreal			
Guilty (%)	97	91	95
Not Guilty (%)	3	9	5
Total Percentage	100	100	100
Total Sample	110	81	191

Notes: n/a = information not available

- Montreal data are not comparable to the other sites; cases where the charge was withdrawn are omitted from the sample.
- The "communicate" may be withdrawn when the prostitute pleads guilty to other charges, such as violating bail or failing to attend court.

5. *Conviction Rates*

The conviction rate for communicating charges was high -- ranging between 75% and 90% in five courts. Prostitutes were convicted in larger proportions than customers in Vancouver (93% and 79% respectively) while the reverse was the case in Toronto[38] (82% versus 93%). In Vancouver, about one-tenth of the customers were found not guilty. In that city, the researchers found that the defence of curiosity was sometimes successful; that is, the accused customer was found not guilty because there was evidence to suggest that he had no intention of carrying through on the offer made to the policewoman decoy.

Therefore, if one indicator of ease of application of the communicating law is the rate of conviction, it would appear that the legislation has been relatively effective.

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[38]As noted on the last page above, in Toronto prostitutes often have their s. 195.1 charge withdrawn when they plead guilty to other charges. If conviction is examined in terms of "was the accused found guilty on at least one charge arising from the soliciting incident?", the rates for Toronto prostitutes and customers are almost identical.

TABLE 9

CONVICTION RATES FOR COMMUNICATING CHARGES IN FIVE SITES

	Prostitutes	Customers	Total
Vancouver			
No Plea, Charge Withdrawn, etc. (%)	4	11	5
Not Guilty, Dismissal (%)	4	10	5
Convicted (%)	93	78	89
Total Percentage	100	100	100
Total Sample	250	79	329
Calgary			
No Plea, Dismissal, Not Guilty (%)	n/a	n/a	26
Convicted (%)			74
Total Percentage			100
Total Number			58
Toronto			
No Plea, Charge Withdrawn, etc. (%)	17	4	12
Not Guilty, Dismissal (%)	1	2	2
Convicted (%)	82	93	87
Total Percentage	100	100	100
Total Population Estimate	1,935	1,500	3,435
Montreal			
Found Not Guilty (%)	0	2	1
Convicted (%)	100	97	99
Total Percentage	100	100	100
Total Sample	110	81	191
Halifax			
Nullified, Dismissal (%)	n/a	n/a	15
Convicted (%)			85
Total Percentage			100
Total Number			123

Notes: n/a = information not available

- Montreal data are not comparable to the other sites; cases where the charge was withdrawn are omitted from the sample.

E. What Sentences Were Received by Persons Convicted under Bill C-49? Did the Law Appear to be Equally Applied to Prostitutes and Their Customers in Terms of Sentencing? In What Ways, If Any, Did the Sentences Differ in the Various Study Sites?

For the first time in the history of street prostitution law in Canada, Bill C-49 explicitly enabled the criminal justice processing of customers as well as prostitutes. In this section, the sentences imposed by the provincial courts in the main study sites are described.

Because s. 195.1 is a summary conviction offence, the maximum penalty is a $2,000 fine or six months imprisonment or both (s. 722 of the Criminal Code). As is the case with most other maxima found in the Code, it is extremely rare for summary conviction offenders to receive the most severe sentence. In addition to fines and custody, the court has a variety of options available upon conviction, including absolute and conditional discharge, probation with a large number of possible conditions, and suspended sentences with or without a period of probation attached.

In any comparison of court sentencing, it is important to mention that the courts differ in their practices. For example, in some jurisdictions, it is not uncommon for the court to give multiple sentences for the same offence (such as probation and a fine), whereas in other courts, the trend is toward one sentence for each offence. Similarly, the use of discharges may differ among jurisdictions, regardless of the offence type. Thus, what appear to be differences in sentence for communicating offenders may -- at least in part -- be the consequence of variations in the "local legal environments", rather than differences specific to the offence of communication for the purposes of prostitution.

Another factor that contributes to the difficulty of comparing sentences is that police departments may differ in the extent to which they lay additional charges that may be associated with the communicating incident. For example, prostitutes in some cities may be routinely charged with "fail to appear" when they miss a court date; they

may be charged with "attempt to obstruct justice" when they lie to police about their identity. Consequently, the courts must deal with multiple charges which have arisen from the same incident, a factor that may result in the accused person (in this case, almost always a prostitute) receiving a more severe sentence on the s. 195.1 charge.

1. *Halifax*

Of the 104 cases of communicating that ended in conviction in Halifax during the period during which the law was enforced, the vast majority of offenders (almost nine out of 10) received fines (Table 9). A small minority, largely young offender prostitutes, received a term of probation. Two persons were discharged absolutely. While sentencing data are not available for prostitutes and customers separately, it is apparent that most offenders received a fine. The fine amounts were relatively low: 80% of persons fined were obliged to pay less than $200 (generally $100 and $10 court costs). No large differences between prostitute and customer fines were found.

2. *Montreal*

In Montreal, as in Halifax, the most frequently used sentence was a fine: 84% of s. 195.1 cases resulted in a fine alone, with 13% ending in custody and 3% in probation. Although fines predominated for both prostitutes and customers, prostitutes were much more likely to be incarcerated than were customers (23% versus 0%), when the sample was taken as a whole. However, when the sentences of first offender prostitutes are compared to those received by customers, it is clear that there is little difference in sentences: 92% of prostitutes and 99% of customers were fined, and only 5% of the small sample of first offender prostitutes received custody (Table 10). Moreover, when the amount of the fine was examined for first and subsequent offenders separately, the fines received by first offender prostitutes and customers were almost identical (an average of $301 for prostitutes and $288 for customers). When the total sample of prostitutes is considered (including recidivists), it is found that prostitutes were fined, on

average, $379. Incarceration was used primarily for recidivist prostitutes, and the average sentence length was about one month.[39]

In summary, there is no evidence of discriminatory treatment of prostitutes with regard to sentencing in the sample of Montreal cases dealt with under s. 195.1.

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[39]However, in several cases, the prostitute's custodial sentence was based on multiple charges of communicating which were dealt with at the same time by the court.

TABLE 10

THE SENTENCES RECEIVED BY PROSTITUTES AND CUSTOMERS IN FIVE SITES

	Prostitutes	Customers	Total
Vancouver			
Absolute Discharge (%)	1	10	3
Conditional Discharge (%)	9	35	16
Fine Only (%)	31	45	34
Probation, Suspended Sentences, Including with Fine (%)	40	10	33
Custody (%)	19	0	14
Total Percentage	100	100	100
Total Sample	192	62	254
Calgary			
Absolute Discharge (%)	n/a	n/a	2
Fine Only (%)			86
Probation, Including with Fine (%)			7
Custody (%)			5
Total Percentage			100
Total Number			43
Toronto			
Absolute Discharge (%)	12	47	29
Conditional Discharge (%)	13	23	18
Fine Only (%)	30	27	29
Probation, Suspended Sentences, Including with Fine (%)	21	0	12
Custody	23	2	13
Total Percentage	100	100	100
Total Population Estimate	1,595	1,398	2,993
Montreal			
Fine Only (%)	73	99	84
Probation, Including with Fine (%)	4	1	3
Custody (%)	23	0	13
Total Percentage	100	100	100
Total Sample	108	79	187
Halifax			
Absolute Discharge (%)	n/a	n/a	2
Fine Only (%)			87
Probation, Including with Fine (%)			11
Total Percentage			100
Total Number			104

TABLE 11

THE SENTENCES RECEIVED BY "FIRST OFFENDER" PROSTITUTES AND CUSTOMERS IN VANCOUVER, TORONTO AND MONTREAL

	Prostitutes	Customers
Vancouver		
Discharges (%)	13	45
Fine Only (%)	30	45
Probation, Suspended Sentences, Including with Fine (%)	47	10
Custody (%)	10	0
Total Percentage	100	100
Total Sample	133	62
Toronto		
Discharges (%)	49	75
Fine Only (%)	23	24
Probation, Suspended Sentences, Including with Fine (%)	15	0
Custody (%)	12	0
Total Percentage	100	100
Total Population Estimate	557	1,124
Montreal		
Fine Only (%)	92	99
Probation, Including with Fine (%)	3	1
Custody (%)	5	0
Total Percentage	100	100
Total Sample	39	79

Notes: Percentages are rounded off and therefore may not add up to 100.

- In Vancouver and Montreal, a "first offender" is defined as a person with no prior communicating charge, and in Toronto a first offender is a person with no prior conviction of any kind.

3. *Toronto*

In Toronto, unlike in Halifax and Montreal, fines were received by only about three out of ten offenders, and no one sentence predominated. Almost one-half of customers were discharged absolutely and an additional 23% received conditional

discharges. About one-quarter of prostitutes were discharged absolutely, and slightly over one-fifth were sentenced to probation or received a suspended sentence. Between one-fifth and one-quarter of the prostitutes were sentenced to custody.

Fine amounts in Toronto were low: 71% of prostitutes and 52% of customers were fined $100 or less. Only 15% of prostitutes and 18% of customers had to pay $200 or more.

Custodial sentences received by the 23% of prostitutes who were incarcerated ranged from one to 90 days, with just over one-half sentenced to seven days or less.

The analysis of the Toronto sample of cases found that, even when prior convictions are taken into account, prostitutes were sentenced more severely than customers. For example, among those with no prior convictions of any kind, 49% of prostitutes -- but 75% of customers -- were discharged, 25% of both groups were fined, and 12% of prostitutes and only 1% of customers were imprisoned (see Table 11).

Another finding of interest was that the sentences of both prostitutes and customers increased in severity between 1986 and 1987. This is true even when prior convictions were controlled. For example, in 1987, 43% of the prostitutes with a prior record (of any kind, including a communicating charge) were sentenced to custody, an increase of 20% over the 1986 sample of prostitutes with a prior record. (These data are not shown in table form.)

4. *Calgary*

Because of the small number of charges laid in Calgary, and because the courts in the city have put most cases "on hold" while awaiting the decision of the Supreme Court of Canada on the constitutionality of s. 195.1, few conclusions can be drawn from

the 43 charges reaching sentencing. Fines were used in 86% of the concluded cases, and they were marginally greater for customers than for prostitutes.[40]

5. *Vancouver*

In Vancouver, as in Toronto, an array of sentences was imposed on communicating offenders. According to the analysis of a sample of convictions, about one-third received a fine only, another one-third received probation or a suspended sentence, almost one-fifth were discharged, and 14% were incarcerated. About 45% of customers were discharged, the same proportion were fined, and 10% were placed on probation or given a suspended sentence. No customers had a prior communicating conviction, although in the prostitute sample, about three out of ten offenders did. For prostitutes, the likelihood of incarceration increased with the number of prior convictions under s. 195.1 (although the numbers are small).[41]

Probation or suspended sentences were received by almost one-half of first offender prostitutes. This sentence was encouraged by the police and the Crown in order to enable them to ask the court for area restrictions, particularly for young offenders. About three-quarters of probation orders for the young offenders involved an area restriction, compared to about two-fifths of adult orders.

Sentencing of first offender prostitutes and of customers in Vancouver appears to differ.[42] Almost one-half of customers were discharged, compared to only 13% of the prostitutes with no earlier communicating charges (Table 10). Just over one-tenth of first offender prostitutes were imprisoned, but none of their customers were. However,

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[40]Eleven of 16 prostitutes who were fined received fines of less than $200; four of 14 customers received the same amount.

[41]Data not shown in table form.

[42]This conclusion must be a tentative one. It is very possible that "first offender prostitutes" had prior prostitution-related or other convictions that the courts took into consideration at sentencing.

there was no large difference in fine amount; the average fine was $126 for first offender prostitutes and $139 for customers.

6. *Discussion*

The jurisdictions participating in the C-49 study often dealt differently with offenders convicted of communicating. As noted in the introduction to this section, this may partly be a reflection of general court practices. Fines predominated in Halifax, Montreal and Calgary. Fines in Montreal were almost twice as large as they were in the other cities. In Vancouver, customers were fined and discharged in equal proportions (45% received each outcome), whereas in Toronto, customers were largely discharged (70%). Prostitutes in Vancouver often received probation or suspended sentences (40%) or fines (31%). Toronto prostitutes received a variety of sentences: discharges (26%); fines (30%); probation or suspended sentences (21%); and imprisonment (23%).

The analysis of differences in sentences imposed on prostitutes and customers suggests that there may be discrimination against prostitutes in Vancouver and Toronto; that is, when prior record of the accused is controlled, it appears that first offender prostitutes were receiving more severe sentences than their customers. There is little or no evidence that the same phenomenon took place in Montreal.[43]

It is worth noting that about one-fifth of all convicted prostitutes in Vancouver, Toronto and Montreal received a custodial term. When prostitutes with prior convictions for communicating are examined separately, the proportions receiving jail time increase to just over one-third (in Montreal and Vancouver) and almost one-half (in Toronto). These high proportions -- when coupled with the large number of female

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[43]Because we could not control for all possible factors that may affect court sentences, this conclusion must remain tentative. (For example, there may be other aspects of prostitutes' cases -- such as the number of current charges -- which were not taken into consideration by the analysis.) Furthermore, the number of repeat customer offenders was too small (or non-existent) to assess the extent to which recidivist prostitutes and customers were dealt with differently by the courts.

prostitutes who continued to work the streets of the three major cities -- suggest that prostitutes in general were not being deterred by short periods of incarceration. Criminal justice system respondents were asked the extent to which the sentences received by prostitutes functioned as a deterrent. Most persons suggested that the sentences were far too light, and that prostitutes were not deterred by their experiences. (However, in many cities, these respondents had no knowledge of the overall sentences received by first offenders and recidivists; their conclusions were based on impressions rather than sentencing statistics.) Some respondents did, however, suggest that newcomers might be deterred by their contact with the criminal justice system (specific deterrence) or by the knowledge that street prostitution could result in a charge (general deterrence).

In some cities, respondents indicated that customers who had been caught may have been deterred by the experience. In several cities, consideration was given to releasing to local news media the names of customers charged with or convicted of communicating. In at least two cities -- Niagara Falls and London, Ontario -- the media did report the names of customers. In those cities, publication was viewed as an effective deterrent.

Other respondents noted that the likelihood of general deterrence was low because of the large numbers of potential customers, their ignorance of the law, and the small chance of being caught. In other cities (such as Toronto), many police believed that customers did know that what they did was against the law; that traffic in the stroll areas and the large number of charges laid against customers were evidence that the law had not yet acted as a general deterrent to the cruising john.

Nevertheless, the prostitutes interviewed in some cities believed that the number of customers had decreased since the law as a result of customer awareness of the law.

CHAPTER IV

THE PRACTICE OF STREET PROSTITUTION SINCE BILL C-49

This chapter attempts to assess the effects of the new street prostitution law on the practice of street prostitution. Where possible, comparisons are made with practices that existed before the new legislation, and changes are noted that may be attributed to the law. The following questions are addressed:

(a) Did the law contribute to a decrease in street solicitation? If yes, to what degree? If no, why not?

(b) Who were the prostitutes working on the street? Were they different from the men and women on the street before Bill C-49?

(c) Did the practice of street prostitution change as a result of C-49? Did it become more dangerous?

(d) Did C-49 contribute to a geographic displacement of prostitution, (movement of prostitutes from one area to another) or to the modal displacement of prostitution from one form to another?

(e) Who were the customers of street prostitutes?

(f) How did the new street prostitution legislation affect the practice of juvenile prostitution?

(g) What was the impact of concerns about sexually transmitted diseases -- especially AIDS -- on the practice of prostitution?

A. How Did Changes in Land Use in the Cities and Communities Studied Contribute to the Street Prostitution Nuisance?

Historians and urban sociologists have provided some background for understanding contemporary Canadian street prostitution problems, for assessing the responses of different communities to C-49, and for predicting future problems.

Historically, street prostitution strolls have developed in the core of many North American cities in areas near or surrounding the central business district. This has happened for two reasons. There is a "pull" or attraction to "downtown activities" for

tourists, on-lookers, transients or people generally seeking entertainment. As well, pressure from the central business district often creates a marginal area (rooming houses, cheap hotels, skid rows and industrial buildings) near the core. Street prostitutes, often transients themselves, are able to find clients, cheap rooms and anonymity in these areas.

As cities continue to grow, the value of land, especially in the core or centre, has increased, altering the residential plan of cities. Canadian cities such as Montreal, Ottawa, Toronto and Winnipeg have undergone changes in their core which explain current and may cause future street prostitution problems.

In a June 1988 article entitled "Metro's Crunch Leaving Marks in Neighbourhoods", the Globe and Mail described the changes which have taken place in Toronto's Cabbagetown and other central downtown neighbourhoods under the pressure of a changing real estate market. A core renewal program has seen the wealthy -- both professionals and business executives -- buying up and renovating older homes and rooming houses. No longer content with commuting to the suburbs, this group has progressively pushed many of the former occupants, which included vagrants, drunks and petty criminals, out of the area. Perhaps because of the market for prostitution services, street prostitutes have been the most reluctant to leave. Enforcement of C-49 in Toronto succeeded only in moving the problem of street prostitution from one downtown street to another.

According to newspaper reports, the situation in Montreal appeared to be several steps behind Toronto. Montreal's "Main" or St. Laurent Boulevard, like Cabbagetown in Toronto, is being "gentrified". Trendy shops and restaurants have been springing up along the Main, and a wave of residential and commercial development is being planned for the area. Since the St. Laurent Boulevard/St. Catherine Street area has historically been Montreal's informal red light district, conflicts over land use appear imminent.

Core renewal programs in Ottawa and Winnipeg have led to conflicts over land use between residents, merchants and street prostitutes. While C-49 appeared to have alleviated the street prostitution problem in Ottawa, it had little success in Winnipeg, where the problem appeared to be more entrenched. Cities like Calgary have boomed in the suburbs rather than in the core, and have avoided such conflicts. But proposed commercial development near the Calgary stroll, as well, threatens to create conflict over land use.

The changes described above have prompted sociologists and demographers to suggest that relief from problems of street prostitution will only come from innovative city planning, not from Criminal Code changes.

As was previously discussed, no formal survey of citizens in areas affected by street prostitution was done. Nonetheless, it has been noted in different chapters of this report that individual citizens as well as citizens' groups in Toronto, Vancouver and Winnipeg have continued to complain to and lobby police departments, municipal officials and the federal Department of Justice about the continuing nuisance caused by street prostitution.

B. Did the Law Contribute to a Decrease in Street Solicitation? If Yes, to What Degree? If No, Why Not?

This question, critical in terms of the objectives of C-49, has proven the most difficult to answer. Because street prostitution has always been an illicit and clandestine phenomenon, its extent has been difficult to gauge. No official statistics on the number of street prostitutes exist or have ever existed; rather, one can only use estimates from those closest to the street scene (police, prostitutes and social agencies) or extrapolate from police arrest records or street counts.

In 1984, to inform the Fraser Committee, the Department of Justice conducted studies which attempted to assess the extent of street prostitution in different cities within the five geopolitical regions in Canada. Findings from these studies were used

for this research, wherever possible, as a baseline from which to assess post-amendment changes.

Because of the type of complaints which resulted in Bill C-49, and because of the absence of "hard data" on numbers of street prostitutes in Canadian cities, researchers did not attempt to comment on changes in the total number of street prostitutes in any site. Rather they attempted to assess whether the law had contributed to a decrease in the perception of the problem of street prostitution. It was felt that while the number of street prostitutes is the larger issue being addressed by the legislation, their visibility in residential areas is the critical issue. Stated in other words, one could envisage the law achieving its goals if identical or even increased numbers of street prostitutes operated in a less visible or bothersome fashion.

The research for this study involved street counts of prostitutes in order to compare their numbers to 1984 figures. In addition, those directly affected by the problem -- police, prostitutes and citizens -- were asked if (in their perception) there was a diminution of the problem.

The number of street prostitutes is described for each of the cities studied and is followed by a discussion of the impact of the law.

1. *Halifax*

A comparison of street counts in 1986-1987 with observations from 1984 research indicated that the number of visible street prostitutes in Halifax had declined substantially. Street counts indicated that the number of female prostitutes had declined from approximately 50 in the summer of 1983 to 35 in the summer of 1987. There was little change in estimates of the numbers of male prostitutes. Interviews with media, police, Crown and citizens corroborated these findings.

The trends in monthly arrests in Halifax, when coupled with street counts, provide interesting observations. Arrests of street prostitutes increased after the law was proclaimed, from December 1985 to December 1986. According to respondents, during this period the number of street prostitutes decreased. Subsequently, when the Court of Appeal overturned the law in Nova Scotia in May 1987 and arrests were not being carried out, researchers found a noticeable increase in street prostitution. This finding suggests that the law did have at least a short-term effect in reducing numbers of street prostitutes in Halifax.

2. *Montreal*

It is difficult to make firm statements as to whether there is more or less street prostitution in Montreal since Bill C-49. The 1984 research is vague, because key respondents estimated that from 90 to 4,000 prostitutes operated in Montreal. The research did note that on Montreal's "Main", St. Laurent Boulevard, over 50 female street prostitutes were working openly. These women constituted a nuisance and a problem for citizens and police.

Respondents, including police, prostitutes and other criminal justice officials, believed there had been a reduction in street prostitution in Montreal since proclamation of C-49. Documents from the Montreal police noted that daytime street prostitution in the city's core had decreased from 20 female prostitutes to five or six, while nighttime prostitution had decreased from 100 females to 50.[1] These figures roughly correspond to the peak street counts which were carried out for this research.

Other respondents, notably social service agencies, disagreed. They believed that there were no fewer prostitutes working after the law than before. Rather, they suggested that the men and women had been displaced to new streets or to the indoors. Street counts and observations of prostitutes in Montreal give some credence to the

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[1]Documents were provided by the MUC in February 1987.

displacement hypothesis. The street counts did indicate small numbers of female prostitutes working on streets near the traditional strolls, while downtown hotel security people noted street prostitutes in their lobbies for the first time.

In summary, research in Montreal suggested that there was less of a concentration of street prostitutes in the main traditional stroll (the St. Laurent Boulevard and St. Catherine Street area) and a small dispersal of female prostitutes to new areas. The post-law situation appeared to have provided some relief to police and residents.

3. *Toronto*

Toronto police had been tracking prostitutes since 1986 and had identified between 1,200 and 1,500 street prostitutes working in Metro Toronto. Police and social agencies estimated that there were from 1,500 to 2,000 prostitutes working in the summer of 1984. These figures suggest that the actual number working pre- and post-C-49 may not differ appreciably.

Street counts[2] conducted in Toronto revealed that, on average, some 50 to 60 men and women were working in the major street prostitution strolls during the summer. The highest number counted on one night was 90. Comparable data from 1984 are not available.

There was little agreement among key respondents as to whether street prostitution had decreased since the inception of C-49. It was generally felt that prostitution had decreased in some areas of the city because prostitutes had shifted to new streets within the city core. Because of escalating land values in downtown Toronto, there had been little success in finding acceptable areas for the trade. Street prostitution continued to be a problem in Toronto.

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[2]The counts were conducted from June 1987 to January 1988.

4. *Calgary*

Bill C-49 did not succeed in achieving any substantial long-term reduction of street prostitution in Calgary. Street counts indicated that about 50 male and female street prostitutes were working on the city's streets during peak periods in the summer and fall of 1987; this number had not changed substantially since 1984.

Unlike in other cities, in Calgary police enforcement had aimed more at containing street prostitution -- keeping street prostitutes in a specific area -- rather than at reducing their numbers. Police in Calgary maintained that the legislation enabled them to have better control of the "street scene", because it permitted them to make arrests when necessary. From street counts and interviews it was noted that after major police arrests, numbers on the street declined for a day or two, but quickly rebounded. It is interesting to note that, unlike in Halifax, where a hiatus in law enforcement led to increases in levels of street prostitution, there were no increases in street prostitution in Calgary when the law was not in force.

5. *Vancouver*

The research in Vancouver provided data not available in other sites, such as pre- and post-C-49 head counts of street prostitutes between 1984 and early 1988. These counts indicated that enforcement of the new legislation may have had a short-lived impact on levels of street prostitution. From 1984 to 1986, numbers of street prostitutes in Vancouver declined markedly. The average number of prostitutes counted between April and June 1985 (before Bill C-49) was lower than the mean counts for the same months in 1986. The difference is even greater when the April to June 1986 means are compared to those for 1985.

Two conclusions are suggested by the street counts over time. First, there may have been a short-term reduction in numbers as a result of police enforcement of the new legislation. Second, since the number of working prostitutes had started to decrease

prior to the law, factors other than the law probably were affecting the size of street prostitution in Vancouver.

Although some members of the Vancouver Crown's office and police believed that the new legislation had helped to control street prostitution, most felt that one of its main benefits was symbolic: it made clear the government's and the public's intention to criminalize street prostitution. Observations made by the local researchers indicated that the main effect of the legislation was to displace prostitutes to new strolls. Complaints from residents about street prostitution continued in Vancouver.

6. *Other Cities*

Ottawa

In 1984, some 50 to 75 female prostitutes worked in the city, primarily in the Byward Market area. In 1987, only 10 to 12 remained. According to police, C-49 contributed to a substantial reduction in street prostitution in Ottawa. In addition, police reported that complaints from businesses and residents had decreased. They speculated that some female prostitutes moved to escort services, while others left for other cities such as Toronto or Montreal.

Niagara Falls

In 1984, police in Niagara Falls estimated that some 100 female prostitutes worked in the city. Eighty per cent of them were believed to have crossed the border from Buffalo and Niagara Falls in the United States where prostitution laws were tougher. Street counts in 1986-1987 indicated that some 15 to 20 female prostitutes continued to work in central Niagara Falls. Police stated that the number of American female prostitutes crossing the border had greatly diminished because of the enforcement of C-49.

London

Estimates suggested that in 1985 some 35 female and 10 to 12 male prostitutes worked the streets in London. Juvenile prostitution was a serious concern at that time. According to police, the street trade has declined markedly since C-49, especially in its second year when enforcement was intensified. Police estimated that about 20 female prostitutes worked the streets in 1987.

Winnipeg

The new provisions appear to have been of limited benefit in Winnipeg in reducing the number of street prostitutes. Police reported that some 90 female prostitutes operated on the streets, and that prostitutes in the three core strolls continued to disrupt local residents, businesses and tourists. Enforcement efforts had only short-term success. Some displacement of prostitutes occurred between the two main female areas. Nonetheless, police expressed the view that having the legislation was far better than the situation that existed before C-49.

Regina

Street prostitution continued to be regarded as a substantial problem in Regina. Some 40 to 50 female prostitutes occupied strolls in the core neighbourhoods and downtown shopping areas within the city. According to police, street prostitution had been increasing and spreading into new areas since the early 1980s. Control of street prostitution at times monopolized 90% of the Regina Vice Squad's time. Substantial numbers of Regina prostitutes were native women who, as a result of their marginal existence and the lack of available social services, had difficulty leaving the street.

Trois-Rivières

The street prostitution situation in this city was not deemed problematic. The maximum number of street prostitutes working at any one time, according to Trois-Rivières police, was six. A very small number of arrests were carried out using the new s. 195.1 provisions.

Quebec City

Street prostitution in Quebec City was not a concern for law enforcement authorities. From February 1986 to June 1987, there were some 120 arrests of prostitutes and clients. Virtually all pre-C-49 nuisances had been eliminated.

7. *Discussion*

It is difficult to provide a simple and clear answer to the question of the reduction in the magnitude of the street sex trade. In the two Canadian cities where street prostitution presented the greatest problem, Vancouver and Toronto, the legislation had virtually no success in moving prostitutes off the street. Both street counts and interviews with key respondents in these cities suggested that, at best, prostitutes were simply displaced to new areas. Street prostitutes in both cities stated that the law was not a deterrent. Because of the large numbers and because of land-use conflicts, the problem persists.

In Montreal and Halifax, although the legislation did not eliminate street prostitution, some women appeared to have left the street trade and the concentration in certain areas was lower. This fact, coupled with the less obtrusive practice of street prostitution did, according to police and citizens groups, ameliorate the situation. In Calgary, police utilized the law to contain the same number of street prostitutes in an area, a tactic that appeared to have been acceptable to most of the community.

In the secondary evaluation sites, the legislation had mixed results in reducing street prostitution. In Quebec City, Ottawa, Niagara Falls and London, fewer street prostitutes worked than before the legislation. Police reported that many left the trade and that the problem appeared to be under control. In the prairie cities of Winnipeg and Regina, street prostitution persisted. Perhaps because harsh economic conditions in these two cities weighed heavily on certain groups, such as native women, criminalization had little deterrent effect. The problem of street prostitution in these two prairie cities persisted in residential neighbourhoods.

C. Were Prostitutes Working on the Street Different from the Men and Women on the Street Before Bill C-49?

Critics of Bill C-49 feared that as a result of the new legislation, street prostitutes, an already marginal group, would be further entrenched in the trade. Many were described as single women with little education or job skills who had children to support. To test this hypothesis, street prostitutes were interviewed and their socio-demographic profile was compared to similar profiles obtained in 1984 research, to find out if they appeared further entrenched than prostitutes in 1984.

Before proceeding with a discussion of this issue, several methodological problems should be mentioned. First, as was noted in 1984, the "street" can be a difficult milieu to penetrate. Researchers in the field sites spent hours on the street conducting interviews with prostitutes -- on street corners, in coffee shops, in bars, etc. The reliability of certain findings can, and should, be questioned. It is difficult to know if people on the street will easily admit to being underage, to having a pimp, or to having a criminal record. Secondly, in some field sites, different samples were interviewed in 1984 and 1987, limiting comparability between the two time periods. In Montreal, for example, researchers for this study interviewed older prostitutes exclusively in order to compare their pre- and post- legislation perceptions. In the Prairies, prostitute interviews were conducted in cities in Manitoba and Saskatchewan in 1984, but in Calgary in 1987.

1. *Halifax*

Twenty-five street prostitutes (24 women and one man) were interviewed on the streets of Halifax in 1987. The profile of this group tended to confirm the fact that the Halifax street prostitutes would have difficulty leaving the street. The majority were 20 to 30 years old, had children, and were local women. The vast majority had been arrested at least once and listed prostitution as their sole source of income. In comparing them to the sample interviewed in 1984, one found that in 1987 a greater

percentage were married, had dependents, and had longer criminal records. These liabilities, coupled with the economic realities in Halifax, would perhaps make it difficult to exit from "the life".

2. *Montreal*

Because of tensions resulting from the enforcement of C-49, it was difficult to obtain interviews with street prostitutes in Montreal. A sample of prostitutes arrested by the Montreal police is compared to the sample of prostitutes interviewed in 1984. The majority of stree. prostitutes in 1986-1987, as in 1984, were in the 18- to 24-year-old range. Most had not completed high school. The vast majority were single, born in Canada, and listed prostitution as their sole occupation. The major difference in the group of 1986-1987 prostitutes was that they had been arrested far more frequently than had women interviewed in 1984. As in Halifax, the profile that emerged was one of individuals who would have few career alternatives and who could have difficulty extricating themselves from street prostitution.

3. *Toronto*

A comparison of prostitutes pre- and post-C-49 in Toronto profiled some clear findings. In 1987, 111 street prostitutes (mainly female) were interviewed in Toronto. Their characteristics were remarkably similar to those of the prostitutes who were interviewed in 1984. Several similarities are noted.

TABLE 12

A COMPARISON OF TORONTO PROSTITUTES: 1984 AND 1987 INTERVIEW SAMPLES

	1984 Percentage	1987 Percentage
Age		
16-21	44	50
22-30	42	41
Education		
Grade 8 or Less	11	7
Grades 9-12	80	81
Employment		
No Previous Work Experience	20	10
Previous Work Experience	80	90
Marital Status		
Single	80	74
Married	20	26
Living with someone		
Yes	77	62
No	23	38
Children		
None	66	62
One or More	34	38
Prior arrests		
Never Arrested	23	20
Arrested Once or More	77	80

As the samples of prostitutes interviewed in 1984 and 1987 are not small, it appears reasonable to conclude that the type of person working on the streets of Toronto post-C-49 was very similar to the type of person who worked before the legislation.

4. *Calgary*

Because the 1984 interviews focused on Regina and Winnipeg, comparisons with the study sample of prostitutes interviewed in Calgary were not possible. Nevertheless, considerable numbers of street prostitutes were interviewed in Calgary (51 women and 19 men; according to street counts, the majority in the city), and it is worth noting some of their characteristics in comparison to those of prostitutes in other cities.

As was the case in most cities, about one-half of Calgary prostitutes were 16 to 21 years of age. Compared to the Toronto sample, slightly lower proportions reported achieving a high school education; only about half of the female prostitutes in Calgary had completed grade 12. Calgary prostitutes were similar to those in other cities in that the large majority stated that they were unmarried, but most lived with someone. The 1987 Calgary interview sample differed greatly in "race" from the sample interviewed in Regina and Winnipeg in 1984: in Calgary in 1987, about eight out of ten prostitutes were Caucasian and very few were of native background, whereas one-half of the earlier sample was made up of native Canadians. This difference almost certainly reflects the different character of prostitution in these cities, rather than any changes brought about by the law.

5. *Vancouver*

Interviews with street prostitutes in Vancouver indicated that the 1984 and 1987 interview samples were similar in terms of several social and biographical characteristics, including average age of entry into prostitution, education, and place of birth.

TABLE 13

A COMPARISON OF VANCOUVER PROSTITUTES: 1984 AND 1987 INTERVIEW SAMPLES

	1984	1987
Average Age		
Females	23	25
Males	25	26
Average Age Entered Field		
Females	16	16
Males	17	16
Schooling		
Up to Grade 10 (%)	60	60
Up to Grade 8 (%)	30	30
Place of Birth		
British Columbia (%)	8	40

6. *Discussion*

The evidence with regard to the effect of Bill C-49 on the characteristics of working street prostitutes suggests that, in most cities (with the exception of Halifax), the type of person working on the street after C-49 closely resembled the type of person working pre-law. However, now that post-law prostitutes are liable for charges under s. 195.1, it seems probable that many will accumulate longer criminal records than those who worked prior to the law, at least in those cities where enforcement efforts continue to be vigorous.

D. Did the Practice of Street Prostitution Change as a Result of the Enforcement of New Street Soliciting Legislation?

(a) How do street prostitutes meet clients? Where do they go with clients? Has the legislation affected the financial returns to prostitutes? Have prostitutes developed methods to avoid police?

Have they changed their hours of work? Do prostitutes work more or less?

(b) Is the street "scene" more dangerous as a result of C-49? Do prostitutes rely more on pimps?

The chief rationale for the new anti-soliciting law was to remove prostitutes and customers from the street by increasing their liability to criminal arrest and conviction. This section attempts to examine how enforcement of the new legislation has influenced the practice of street prostitution. In addition, the section presents the results of interviews with prostitutes, police and social agencies, who were asked if the legislation had caused the street milieu to become more dangerous. The situation will be described in each of the field sites, followed by a general discussion comparing the practice across the country.

1. *Halifax*

Female prostitutes worked alone or in pairs in two primarily commercial areas in Hollis/Barrington and Gottingen Street strolls. While the law was in force, female prostitutes met customers unobtrusively and attempted to develop a core of "regulars". Generally, the female prostitutes who were interviewed noted that fewer customers were available and that their business had declined since 1984. Prices for services had risen slightly in Halifax since 1984. The vast majority of tricks continued to be carried out in automobiles. About half of street prostitutes interviewed said that condom use was not their regular practice in Halifax; several said it can be foregone for a higher price.

Interviews with street prostitutes and police in Halifax indicated that the level of violence on the street apparently had not increased since 1984. Nevertheless, more than 50% stated they felt unsafe at work, viewing attacks from customers, pimps and other prostitutes as an occupational hazard. To protect themselves, the majority of female prostitutes interviewed carried weapons, worked in teams, and utilized a "bad trick"

sheet. Although it was impossible to attribute any increase in danger to C-49, the Halifax street scene was perceived as a dangerous place to work.

The female prostitutes agreed that it was more difficult to work the streets after C-49 because they were hassled more by police -- stopped and checked for I.D. Street prostitution was observed in Halifax in May and August 1987. In the earlier period (immediately after the Skinner[3] decision), street prostitutes were observed to be unobtrusive and quiet, while later, researchers noted that prostitutes were generally more noticeable.

Pimps have always been a feature of street prostitution in Halifax. However, the percentage of female prostitutes acknowledging that they had a pimp did not greatly differ between 1984 and 1987.

2. *Montreal*

After the implementation of C-49, key informants agreed that the practice of street prostitution was carried out in a more tense and dangerous atmosphere. The men and women stated that bail practices involving area restrictions had forced them off the main strolls to work in more isolated areas. Prostitutes reported that there were fewer customers and less money on the street, causing their daily revenues to decline substantially. Customers were described as more reticent and "choosy" and often approached prostitutes on foot to ensure that they were not policewomen. Prostitutes attempted to increase their cadre of regular customers wherever possible. Montreal police noted an increasing number of complaints of theft by customers.

Street prostitution in Montreal had changed somewhat since 1984 with respect to the hours it was practised. Many female prostitutes worked later, after midnight or on Sundays to avoid police. Female prostitutes continued to work in teams of two or three

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[3]Supra, Chapter III, note 13.

for protection. The vast majority of tricks were still carried out in automobiles. A minority were carried out in hotel rooms.

Prostitutes developed a variety of methods to avoid being arrested by decoys. These included talking at length to clients to "feel them out", asking prospective clients if they were police (prostitutes believe police are legally bound not to lie), checking the contents of the client's car, asking clients for a higher price to ascertain their objections, asking to see the customer's wallet, and signalling to one another about suspected police cars. Police maintained that despite these precautions, the legislation was easy to enforce.

As in Calgary, intensive police pressure in an area of the city caused prostitutes to disperse for several days, often being observed on the secondary strolls. Unless police pressure was maintained, the situation "normalized" and many of the female prostitutes returned within days.

Female prostitutes who had worked pre- and post-C-49 expressed the belief that the street was a more dangerous place after the legislation. Although they had no greater reliance on pimps, they noted that money and customers were scarcer and that court-imposed area restrictions had forced them to work in unfamiliar areas. To protect themselves, some female prostitutes carried knives and many worked in teams.

3. *Toronto*

Street prostitution in Toronto underwent moderate geographic changes after 1984. As a result of police enforcement, the female trade moved eastward, but remained in traditional areas of prostitution (the streets surrounding Jarvis, Isabella, and others).

The majority of female prostitutes were cautious and generally unobtrusive in approaching customers. Prostitution was more visible in the daytime than it was in 1984, because some prostitutes had shifted their hours of work to avoid the police. The

majority of prostitutes worked in teams, recording the licences of customers for protection. The location of sexual exchanges remained unchanged since 1984; the vast majority of transactions were carried out in automobiles. Although two-thirds of the prostitutes interviewed felt as safe as they had in the past, a minority reported more "weirdos", and an increased sense of danger. Generally, prostitutes and police did not believe the street was more dangerous post-C-49; nor did they find that the legislation necessitated prostitutes getting a pimp.

Street prostitutes used a variety of techniques to avoid being charged. Most asked the prospective customer if he was a policeman (believing that he must tell the truth), looked over the car for indications that it was a rental, asked the customer to expose his genitals or to touch their breast (again believing that he is forbidden to do so). Both police and prostitutes described elaborate "cat and mouse games" to uncover one another's intentions.

4. *Calgary*

The female street prostitution scene in Calgary was different from those in other study sites. The stroll was ecologically unique in that it was created by the police in the early 1980s to move female street prostitutes away from the major hotels. The stroll was a well-lit area regularly patrolled by the police. As a result of few complaints, many of the female prostitutes on the street reported having a good relationship with the police. The male stroll existed in a high-density residential section, but because of the small number of men, there were few complaints during the study period.

Despite a "stroll management" approach by police (few arrests are made), street prostitution is a violent business in Calgary. Interviews with police and prostitutes, as well as police records, revealed that both prostitutes and customers are often victimized by one another. Prostitutes reported that after C-49, customers were more scarce, requiring them to be less choosy. There appeared to be more bad dates, some of whom viewed the female prostitutes as outside the law and fair game for attacks. To protect

themselves, most of the female prostitutes worked in pairs and routinely recorded the licence numbers of vehicles that picked up their friends.

Prostitutes in Calgary were divided as to whether life on the street was more dangerous after C-49. A significant number believed that increasing violence could be traced to the new legislation. They cited changes in the nature and attitudes of "dates", greater competition between prostitutes for dwindling customers, and a greater use of cocaine by themselves and pimps as the chief problems. There was no evidence of a greater reliance on pimps as a result of C-49. Male prostitutes felt that media coverage of the gay stroll was the chief danger, as it inevitably brought out gangs of young men who engaged in "fag bashing".

The locale of sexual exchanges did not change after C-49; most "dates" were carried out in automobiles. Female prostitutes used methods similar to those in other sites to avoid being arrested: inviting prospective customers to touch their breasts, asking them to expose themselves, and searching customers' cars for signs identifying them as undercover police officers.

Street observation indicated the police stings had the effect of removing prostitutes for a day or two, only to have them return.

5. *Vancouver*

Research in Vancouver presented some of the clearest information as to the effects of C-49 on the movement of street prostitutes. Ongoing street observation since 1982 indicated that police enforcement in one stroll mainly had the effect of displacing prostitutes to one of the other two strolls. More female prostitutes worked during the day to avoid police in 1986-1987 than in 1984; the highest counts of street prostitutes were found on certain days when fewest arrests were made.

Prices of prostitute services did not appear to have changed much after C-49. Prostitutes reported carrying out fewer tricks in cars or requesting that cars be driven out of the stroll areas after C-49. Prostitutes generally worked the same number of days as they did before the new law, but reported working longer hours as a result of there being fewer customers.

Police reports in Vancouver traditionally provide little information about the extent of crimes against prostitutes, because few were reported to police both before and after C-49. An analysis of "bad trick" sheets over a three-year period provided no definite trend. It suggested that the average number did increase in 1986 (after the law) but declined in 1987 to a pre-law level.

Interviews with street prostitutes, police and social service agents produced mixed evidence as to whether C-49 made street prostitution a more dangerous trade. All respondents agreed that the incidence of violence against street prostitutes was high in Vancouver. The majority of female prostitutes interviewed had been victims of violence. Interviews provided little evidence that pimps had extended their hold on prostitutes after C-49. Generally, prostitutes noted that as a result of the legislation, customers were harder to obtain and they (the women) were in turn less choosy. Some female prostitutes interviewed noted that as a result of the legislation, they were reticent to report customer attacks, lest they themselves be arrested.

Social workers generally felt that violence from customers was more widespread after the new legislation. Police, on the other hand, believed that violence on the street had not increased since C-49, noting that the arrest of customers increased the likelihood that "bad tricks" would be found out as a result of customer searches.

Research in Vancouver suggested that where bail or sentencing practices imposed area restrictions on street prostitutes, the women simply continued to work in other areas. Prostitutes reported that as a result of this practice, they were forced to work alone and in more isolated areas.

To counter police enforcement, Vancouver prostitutes tended to ask customers if they were police, or to invite them to touch their breast or to expose themselves, believing that these acts are forbidden to police.

6. *Discussion*

The practice of street prostitution was modified somewhat by the new communicating law. Some prostitutes in all of the main study sites stated that they worked under more tense conditions. According to prostitutes, police arrests caused the number of clients to be reduced, and less money was available on the street. Some street prostitutes noted that they had become less choosy and more likely to accept "dates" that were questionable, such as customers who were drunk. Where possible, they had attempted to increase their regular clientele.

In most sites, female prostitutes attempted to work more in teams to look out for one another. Their demeanour was generally inconspicuous and unobtrusive. In some sites, the trade moved into the windows of bars and restaurants and the female prostitutes practised hitchhiking in order to avoid being identified. In all of the sites, prostitutes and customers developed elaborate methods to avoid police decoys. These included asking customers if they were policemen, searching cars, avoiding stating a price for a sex act, asking prospective customers to expose themselves or to fondle them (the prostitute). A few customers asked prostitutes if they were police -- believing that a police decoy would have to divulge his or her true identity -- generally setting up a comical situation on many Canadian streets where both parties ask the other for proof of their identity.

Street prostitutes changed their hours so that, in many cities, they worked more in the afternoon and after midnight to avoid arrest (these are times when police generally carried out fewer stings). In some cities, prostitutes changed their days of work to avoid police.

As was the case before passage of C-49, most tricks were carried out in automobiles. Sometimes the participants drove to more remote areas of the city to avoid police. The clause of the law that designates automobiles as a public place had little impact on the locale of dates. In some cities, there was a temporary diminution of street prostitution for several hours to two days after major police crackdowns on the trade.

Street prostitution remains a dangerous trade. Although some police forces felt that their ability to arrest customers helped "weed out" some of the more dangerous individuals, some prostitutes believed the legislation made their lives more difficult. They commented that customers were fewer and they were consequently less choosy. Vancouver and Calgary were cited as cities where violence between customers and prostitutes had escalated. According to many prostitutes, area restrictions -- aimed at removing them from the main prostitution strolls -- simply forced them to work in more isolation, increasing the danger to them.

E. Did Bill C-49 Contribute to the Geographic Displacement of Prostitution (Movement of Prostitutes from One Area to Another) or to the Modal Displacement of Prostitution from One Form to Another?

In 1984, the Fraser Committee noted that Canadian prostitution law had developed in an ad hoc way and failed to take into account the interdependence of different forms of prostitution. Fraser noted that if pressure by the law is expected in one context or location, it will do no more than produce a shift of the activity to another activity or location. Research in 1984 suggested that enforcement against street prostitutes in one stroll will often cause prostitutes to move to another stroll or to another mode such as escort services. Police efforts in the 1970s had closed massage parlours in most Canadian cities, and prostitutes then moved to the street or to escort services. Although some prostitution exists in hotel bars, strip houses and massage parlours, it could be expected that if police pressure were exerted on street prostitutes in one area, they would likely move to another area or move indoors to escort services.

The 1984 research showed that the two major types of prostitution in Canada at the time were street prostitution and escort services.

For this study, researchers in the different field sites questioned key respondents, conducted street counts of prostitutes, and analyzed newspaper and telephone book advertisements to determine whether off-street prostitution had increased.

1. *Halifax*

There was little evidence that street prostitutes has been displaced to new areas in Halifax. The stroll areas had remained unchanged since 1984; neither female nor male prostitutes reported moving to new locales as a result of the enforcement of C-49. Advertisements for off-street sex in the local newspapers and telephone yellow pages were studied over a four-year period. A small increase was noted in both these media. Interviews with prostitutes and police suggested that some prostitutes on the street were operating with pagers for escort calls.

2. *Montreal*

All of the key respondents noted that there was some geographic displacement of street prostitution in Montreal after C-49. As a result of area restrictions, female prostitutes moved from the main stroll on St. Laurent Boulevard to various secondary areas within the city core. To avoid police, the practice of "hitch-hooking" or prostitutes hitchhiking to meet clients, developed along major streets.

The situation in Montreal was unique in that, while street prostitution in the core of the city was policed by the MUC, off-street prostitution (i.e. primarily massage parlours) existed off the island of Montreal and was policed by the morality section of the Quebec Provincial Police. Unlike other Canadian cities, there were few escort services in Montreal.

Off-street prostitution did not increase outside the island of Montreal. According to Quebec Provincial Police, before C-49 there had been a proliferation of massage parlours and strip clubs. Repeated raids and arrests closed the majority of these locales. Both Montreal and Quebec police suggested that only a small number of these female prostitutes worked on the street. Analyses of the Journal de Montréal -- Montreal's widely read tabloid -- suggested that advertisements for escort services had increased slightly since 1984.

3. *Toronto*

Toronto experienced slight geographic displacement as a result of the enforcement of C-49. Police believe there was some movement of prostitutes between cities in Canada when faced with outstanding charges.

Neither police nor prostitutes suggested that there were many prostitutes who moved indoors as a result of C-49. Police believe that street and escort prostitutes are different "types of people" with only a 10% cross-over between the two. Escort ads in the yellow pages of the Toronto telephone directory increased marginally from 1984 to 1987. Since the new legislation, Now Magazine, a weekly entertainment newspaper in Toronto, has carried graphic advertisements offering the sale of male and female sex. These ads, in which "independents" advertise, increased markedly after 1985. It is difficult, although tempting, to attribute the growth of this medium to the enforcement of C-49.

4. *Calgary*

Calgary provided some of the simplest and clearest information with respect to the displacement effects of police enforcement of s. 195.1. Because Calgary's main female prostitution stroll was created and was closely monitored by the police, no one was required to move. Street counts suggested that periodic arrests resulted in some prostitutes disappearing for a few hours, or a day, to return to work the following day.

Unlike the situation in other cities, the major type of indoor prostitution in Calgary -- the escort service -- is carefully controlled. A Calgary by-law permits escort services to operate only if personnel are screened by police for a criminal record. In addition, the services are regulated as to where and during what hours they can exist. Since women or men who have records for prostitution-related offences are not permitted to work in the escort service, displacement is not an issue.

Newspaper advertisements for escort services did increase in the year after proclamation of C-49, but returned to previous levels in 1987.

5. *Vancouver*

Because street counts had been maintained since 1984, the geographic displacement of street prostitution was carefully documented in the Vancouver research. Flooding the area with plainclothes and uniformed police was more effective in moving street prostitution than the arrest of prostitutes on an ongoing basis. The bail and sentencing practices of area restrictions mainly served to enlarge street prostitution areas rather than deter people. Prostitutes tended to settle in communities where there was least resistance.

In assessing whether the escort service grew after C-49, the research indicated that advertisements in the Vancouver yellow pages have grown steadily throughout the 1980s, suggesting that C-49 was not a factor.

6. *Discussion*

In assessing whether the enforcement of C-49 displaced street prostitutes into other areas or forms, two major findings emerged. Some geographic displacement occurred in most cities. In Vancouver, Montreal, Winnipeg and Toronto, arrest practices -- especially where area restrictions were used as conditions of bail or sentencing -- scattered prostitutes to different parts of the city, which in turn created a

new set of problems. In cities where police enforcement attempted to contain prostitutes in a specific area, as in Calgary, geographic displacement did not occur at all.

Generally, both prostitutes and police acknowledged that "obstruction" from uniformed police and area restrictions were more effective in driving prostitutes out of an area than was the prospect of arrest and fine. Prostitutes settled in areas of least resistance; usually in downtown sections where the surrounding community was least organized and most accepting.

With respect to modal displacement, the second major form of prostitution in Canada is the escort service. These services advertise in telephone directories and newspaper "personal" ads, making them easily accessible to persons interested in "receiving" someone. Massage parlours, a major form of off-street prostitution, were virtually eliminated by police in most cities during the 1970s. Montreal is the only city in which massage parlours still operate in any numbers.

In August of 1987 in its annual report on organized crime, the Canadian Association of Chiefs of Police suggested that enforcement of C-49 had forced many female prostitutes to work in escort services, many of which were controlled by organized crime. Research for this study found no evidence to corroborate this finding. In most of the cities included in the study, street prostitution was as prevalent as it was before the new law, and the female prostitutes who were interviewed generally stated that there was little cross-over between the two modes of prostitution. In Montreal and Toronto, police themselves stressed that the female populations in the two settings were quite different, having no more than a 10% cross-over.

Finally, advertising for off-street sex was charted both before and after implementation of C-49. In many cities, advertisements for escort services increased in 1986 when the law was proclaimed, then quickly returned to pre-C-49 levels.

F. Who Are the Customers of Street Prostitutes?

Until C-49, very little was known about the customers of street prostitutes in Canada. Previous street soliciting legislation did not enable their arrest, and since they were not willing to be interviewed for earlier research, most information about customers came from prostitutes themselves. Bill C-49 has made it possible to collect some demographic data about customers.

Critics of the new law have suggested that charged clients would not include more prominent or affluent citizens, whom police may warn or divert.[4] Others who view the street as a "working class" milieu have speculated that more affluent men do not use street prostitutes but rather use escort services (which traditionally cost more).

This section will attempt to briefly profile clients in each of the study sites to test some of the above-noted assertions.

1. *Halifax*

Only limited data were collected on the customers' sample in Halifax. Of the 25 men arrested, 48% were 35 years of age or older.

2. *Montreal*

Among the sample of arrested customers in Montreal, all were male. Most were between 25 and 44 years of age. Over 50% were married. The majority were Caucasian, French-speaking Canadians from Montreal. Over one-half were manual labourers. Very few had a criminal record.

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[4]There is no evidence that this assertion is true. Police report that they exercise minimal or no discretion with regard to charging customers.

3. *Toronto*

Almost half of the customers in Toronto were in the 25 to 34 age group, with as many married men as single men in the group. Ethnic distinctions were interesting, with 40% born in Canada, 30% being from southern Europe (especially Portugal and Italy) and 16% being Asian. The vast majority were employed; over 60% were blue-collar workers. Most (84%) had no criminal record.

4. *Calgary*

Almost all clients were Caucasian males from Calgary. The median age was 37. All were employed; 50% were white-collar workers, while 40% were blue collar. Other information was not available.

5. *Vancouver*

In Vancouver, the median age of customers was 34; over 40% were under 30. The majority (52%) were married men who worked in blue-collar or working-class jobs (72%). As in Toronto, various racial groups were represented, including 62% Caucasian, 18% Indo-Pakistani, and 17% Oriental. Ninety per cent of the customers were from the Greater Vancouver area. Very few had a previous criminal record.

6. *Discussion*

There were clear parallels in Vancouver, Toronto and Montreal with respect to the characteristics of customers of street prostitutes. Age, marital status, occupational class, employment and previous criminal records were remarkably similar.

It is interesting to note that over one-half of clients were blue-collar workers, suggesting that the lower street prices may be more affordable to them. In Vancouver, one-third of clients were members of minority ethnic groups, while in Toronto over half

were members of ethnic minorities. These figures likely reflect the multicultural make-up of these two cities. Police and social agencies have speculated that because of a different language (lack of familiarity with the law) and different cultural values (greater acceptance of prostitution) many immigrants utilize the services of street prostitutes. Police in Toronto have considered conducting a public education campaign about the street prostitution law in different ethnic newspapers.

G. How Did the New Street Prostitution Legislation Affect the Practices of Juvenile Prostitutes?

In 1984, the Badgley Committee report to the federal government pointed to a substantial problem of juvenile prostitution in Canada. Badgley noted the ineffectiveness of much of existing child welfare legislation, and of existing social service programs. He also noted the weakness of the former s. 195.1 of the Criminal Code, stating that "juvenile prostitutes do not find it necessary to be 'pressing and persistent' in order to secure clients for their sexual services". In the face of what was seen as an "epidemic", the Committee recommended that there be a new offence making it criminal for youths under 18 to be involved in prostitution.

In view of continuing concerns about this issue, the Canadian Child Welfare Association convened a National Consultation on Adolescent Prostitution to better understand and address the problem. In contrast to the recommendation of Badgley, this group recommended that juvenile prostitution be decriminalized and be seen as a problem requiring a concerned child welfare response. It, like Badgley, advocated that the customers of juvenile prostitutes be more seriously penalized. The recent legislative amendments dealing with child sexual abuse have in fact done this (Bill C-15).

In the light of these and other concerns from lobby groups, this field evaluation attempted to assess whether C-49 had any impact on the juvenile prostitution scene in the cities studied. Before examining these findings, it is worth discussing some of the definitional problems that surround the issue of juvenile prostitution.

First, it is difficult to know exactly what is meant by juvenile prostitution. Our interviews indicated that when social agencies or members of the media talk about the juvenile or adolescent prostitute, they are often referring to a broad group of homeless or runaway youths. These young people are sometimes known to exchange sexual services for food, lodging or gifts, or to experiment with their sexuality (e.g., young male prostitutes commonly work on the street as a way of "coming out"). These young people do not often come to the attention of the law or appear in official statistics as prostitutes.

In addition, different ages are used when describing juvenile prostitutes. Badgley defined juvenile prostitutes as those under 20. Fraser addressed those under 18, while still others describe juvenile prostitutes as those under 16, especially when viewing them in the context of child welfare concerns. These distinctions may account for different explanations of what juvenile prostitution is and how much of it exists, as well as for the disparities in the estimates we were given by key respondents.

This research assessed the impact of C-49 in dealing with 12- to 17-year-olds who, if they came to the attention of criminal justice officials, would be considered young offenders. This allowed us to utilize police data as a primary source of information.

As in other sections, the situation will be examined in the different sites and then discussed globally.

1. *Halifax*

In Halifax in 1986-1987, 10% (8) of the street prostitutes who were arrested were juveniles. All were 16 or 17 years old. After C-49, police maintained a considerable presence on the street attempting to identify and deter juveniles and their customers. They credited the legislation with enabling them to arrest young people when they received information as to their whereabouts. Young offenders' sentences that invoke s. 195.1 have involved placing a young person on probation with area restrictions. These

restrictions have enabled police to pick up young people and remove them from the streets. Although research indicated that little juvenile prostitution was visible on Halifax streets, some social agencies maintained it had had a large presence but that it has been driven underground (off-street) by the legislation.

2. *Montreal*

In Montreal there were few arrests of juveniles using s. 195.1. Child welfare legislation is broader and more "protective" of young people in Quebec than it is in other provinces. Generally, there was agreement among police and social agencies in Montreal that C-49 is not the most appropriate method for dealing with juvenile prostitutes -- rather, the phenomenon was seen as part of a constellation of damaging behaviours requiring child welfare intervention. Both police and social workers stated that considerable numbers of juveniles suspected of being prostitutes are picked up under Quebec's child welfare legislation and routinely referred to child welfare authorities or youth protection services. In many cases, even after arrests made using C-49, there were decisions not to proceed but to divert the young persons to youth protection services.

3. *Toronto*

Toronto has a reputation as a magnet for young people who leave home throughout central Canada. Juvenile prostitution has been described by the media as a critical problem in Toronto. Since 1984, the city has responded to this problem by developing specialized services to deal with runaways, juvenile prostitutes and other street youth. At the time of this study, Toronto had the widest array of social services available among the sites studied.

It has been the policy of the Metro Toronto police not to charge juvenile prostitutes who are under 15 unless they are repeat offenders, but to refer them to social services. Police noted that until recently, when the provincial child welfare law was

changed, the policy was difficult to implement because the legislation was restrictive, requiring that a young person be at "substantial risk" before he or she could be apprehended. Toronto police arrest records revealed that 13% of persons charged under Bill C-49 are young offenders -- 16 and 17 years old.

Both social agencies and police believed that after C-49 there were fewer young persons, especially those under 16, working on the streets of Toronto. While social agencies took this as an indication that C-49 had driven young prostitutes underground, police believed that a variety of factors, including vigorous prosecution of the pimps of juveniles, an economic climate more favourable to young people and a general change in Canada's age distribution were responsible for the change.

4. *Calgary*

Statistics for arrests of juveniles in Calgary were as follows: in 1986 and 1987, 14% of prostitutes arrested were under the age of 18; between 1977 and 1979 the figure was 4%. In recent years, the Calgary police stated, they have picked up very few juveniles in the course of their stings. When they do become aware of a potential juvenile prostitute on the streets, the normal practice is to send out an undercover officer with the specific objective of arresting that juvenile. The main objective is to take the juvenile off the street. Police do not automatically lay charges, but may proceed under the provincial Child Welfare Act. Social service agents suggested that considerable juvenile prostitution goes unnoticed in Calgary -- in parks and shopping malls.

5. *Vancouver*

There are various estimates of the extent of juvenile prostitution in Vancouver. In 1986 and 1987, 110 young offenders were charged under the street soliciting legislation. They represented some 12% of persons charged and were primarily 16 and 17 years old. Other sources of information included police intelligence reports, which

indicated that one out of seven female prostitutes routinely checked for identification on the street was a young offender. Social service agencies estimated that 1,000 street kids were involved in drugs and prostitution in Vancouver.

Prior to C-49, police in Vancouver complained that the weakness of the former s. 195.1, coupled with ineffective provincial child welfare legislation, did not allow them to apprehend juvenile prostitutes. According to respondents, C-49 improved this situation by enabling the arrest of juvenile prostitutes. A special police unit has been created in Vancouver to gather intelligence on street youths who have been issued warrants through the Youth Court. Although some informants believed that these conditions, especially area restrictions, simply displaced young people to new areas, many police and social workers believed that the law has had benefits especially with the "better-risk", more motivated young people. There was some agreement among police and social agencies that the harder core kids have been more criminalized and further entrenched in street life. Overall, s. 195.1 was viewed as having had a minor impact on the practice of juvenile prostitution in Vancouver.

6. *Discussion*

Two major findings emerged from this research. Firstly, there was a very real divergence of opinion as to the extent of juvenile prostitution in Canada. Repeatedly, people in the social service sector told us about the juvenile prostitution problem in their cities. Researchers in the field sites were unable to find evidence for these statements, either from estimates during street observations or from police arrest records or interviews with prostitutes and police. Roughly 10 to 15% of prostitutes arrested under C-49 were in the young offender age category; the majority of these were 16 or 17. There were some reports of 14- or 15-year-olds, but these were rare.

The second finding was that there was some concurrence among criminal justice respondents as to the benefit of C-49 in dealing with juveniles. Many felt that the street soliciting legislation was valuable in dealing with better-risk juveniles, especially when

used together with existing social services. In these situations, C-49 was seen as an initial hook with which professionals could establish some control and structure in the lives of young people. For other more "damaged" youngsters, it simply meant further criminalization.

H. What Was the Impact of Concern About Sexually Transmitted Diseases -- Especially AIDS -- on the Prostitution Trade?

There have been concerns from health organizations around the world, including the Red Cross, that prostitutes might become transmitters of the AIDS virus because of their large numbers of sexual partners. At the time of writing, very few female prostitutes in Canada were known to have AIDS. In a Canadian study carried out in 1985 on adult prostitution and AIDS, 109 adult female prostitutes in Vancouver, Edmonton and Calgary were interviewed. None tested positive for AIDS, while 80% indicated that they used condoms regularly.

On the same subject, research from the U.S. Department of Health suggests that the transmission of the AIDS virus is more efficient from males to females than vice versa, placing the female prostitute at greater risk than her customer. The major risk factor associated with AIDS infection among prostitutes studied is the use of intravenous drugs. Regular condom use has been found to greatly reduce transmission. The U.S. Department of Health advocates the provision of counselling services and voluntary testing for the AIDS antibody for prostitutes. Research on the transmission of the AIDS virus among male prostitutes is not available.

Interviews with street prostitutes conducted for this study suggested that condom use, although prevalent, was not a standard practice in all cities. In poorer areas such as Halifax, Winnipeg and Regina there was evidence that condoms were not routinely used and that prostitutes would dispense with them for additional money.

Sexually transmitted diseases among juveniles on the street are a cause for concern. As was noted in 1984 research for the Fraser Committee, street youths, often transiently involved in street prostitution, are generally not practitioners of safe sex. A 1986 study at Toronto's Hospital for Sick Children found that, among 50 adolescent street youth tested, large numbers were unaware of health risks and were infected with diseases such as gonorrhoea and chlamydia. The authors of the study advocated counselling about infectious diseases and safe sex where possible.

Finally, although interviews with street prostitutes suggested that clients occasionally discuss concerns about sexually transmitted diseases, there was little evidence that many customers were deterred by this fear. Reports suggest that the same situation is not necessarily true in other countries. For example, a report in the Manchester Guardian Weekly (April 3, 1988) noted the dismantling of Hamburg's world-famous red light district and of West Germany's biggest brothel, the Eros Centre. As a result of public debate and press campaigns on AIDS, clients were staying away.

CHAPTER V

BILL C-49, STREET PROSTITUTION AND THE REACTION OF THE COMMUNITY

This section attempts to show how the general public, the press, different lobby groups, and citizens directly affected by street prostitution view the new street prostitution law and its effects.

A. What Were the Findings of the Recent Survey of Public Opinion with Respect to Prostitution and Bill C-49?

In the 1987 Survey of Public Attitudes Toward Justice Issues in Canada it was found that Canadians are almost evenly divided on the question of whether or not prostitution should be legal; 47% say it should be, while 45% say it should not be. Although Canadians are divided on the issue of whether prostitution itself should be legal, seven Canadians in ten (71%) agree with the law that makes street soliciting illegal. From these findings, it is reasonable to assume that many Canadians who feel prepared to advocate legalization of prostitution nevertheless prefer that it operate out of sight.

1. *Regional Differences in Attitude Toward Prostitution*

Attitudes toward prostitution vary according to region and community size, and the sex, age and socio-economic status of respondents. Residents of Atlantic Canada are considerably less open to legalization while residents of Alberta and British Columbia stand out as being more open to legalized prostitution. Interestingly, attitudes become more liberal with respect to prostitution as one moves from east to west in Canada.

Data from this survey suggested that Canadians living in cities with populations of 100,000 or more (including Vancouver, Toronto and Montreal) were more open to legalized prostitution than citizens of smaller communities; men were more likely to support legalized prostitution, as were people in the 25-to-44 age bracket. Higher

income Canadians (earning incomes of more than $40,000) and those with post-secondary education tended more than others to support legalized prostitution.

2. *Attitudes Toward the 1985 Prostitution Law (Bill C-49)*

Attitudes favourable to the new soliciting legislation were most strongly held in Eastern Canada (Nova Scotia, 83%, and New Brunswick, 80%) and less strongly held in the West (Alberta, 62%, and British Columbia, 65%). Respondents from small communities of up to 10,000 agreed most strongly with the soliciting law. These trends parallel the differences in attitudes towards prostitution in general.

Among major cities, Vancouver reported the highest agreement with the law (71%), while Montreal reported the lowest (60%). Montrealers expressed the least concern about street prostitution.

Vancouver presented a unique picture in that attitudes toward legalizing prostitution in this city were the most favourable in Canada, while the same public also strongly favoured the new legislation (criminalizing street prostitution), implying that street nuisance is in fact the main concern in this city.

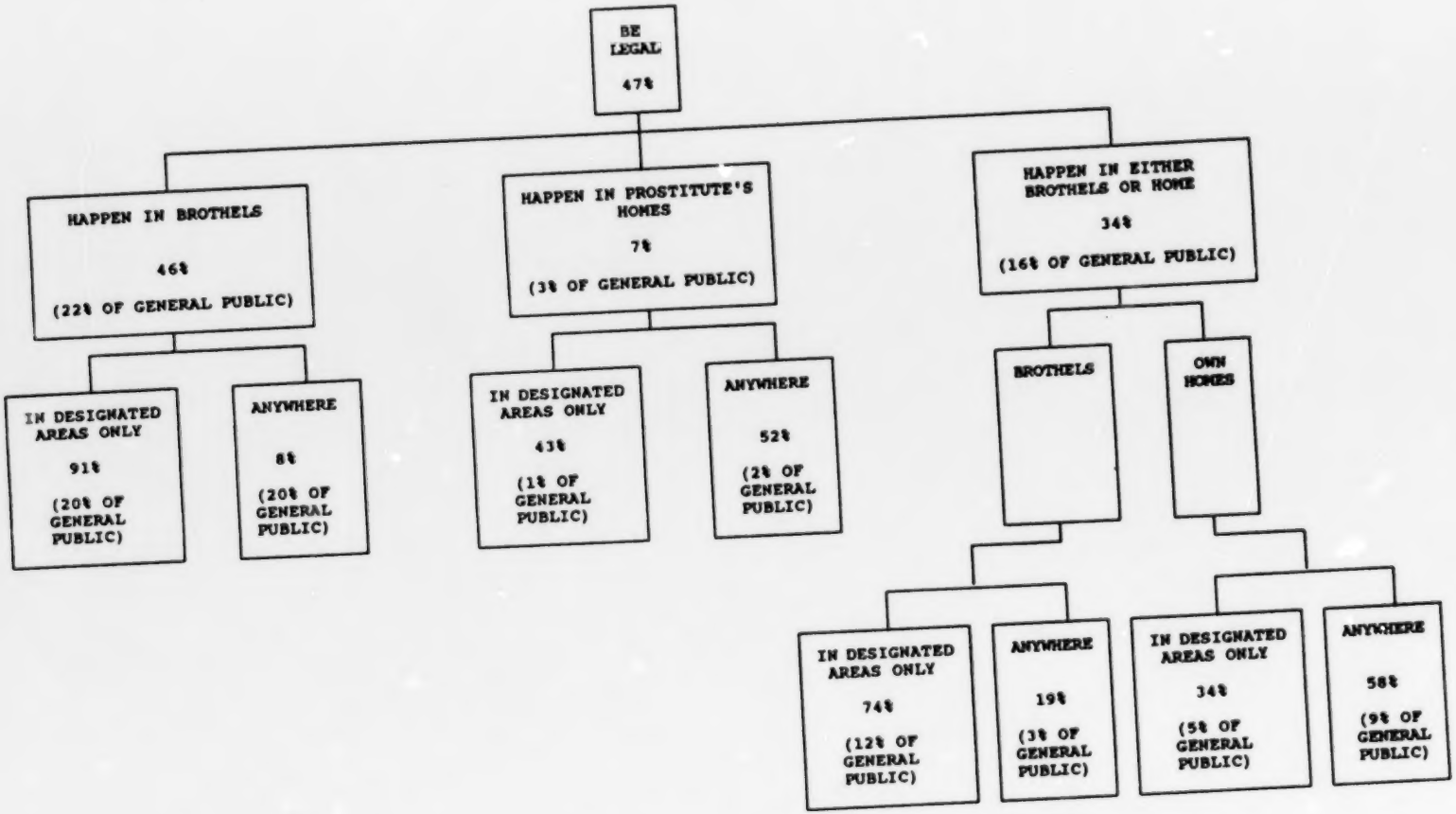
Among those who believed that street soliciting (24%) as well as prostitution in general (47%) should be legal, the majority believed that it should take place in a designated area. Brothels should be located in designated areas while prostitutes working out of their homes should be permitted anywhere.

It is interesting to note that where attitudes toward prostitution were least favourable (as in Atlantic Canada and smaller communities), the research indicated that the phenomenon was also least prevalent.

The following diagram demonstrates the beliefs of those Canadians -- 47% -- who think prostitution should be legal (hereinafter described as the sub-group).

FIGURE 2

OPINIONS OF CANADIANS WHO THINK PROSTITUTION SHOULD BE LEGAL



A series of statements concerning prostitution was read to all survey respondents. The statements read, and the percentage in agreement with each statement, were as follows:

(a) legalizing prostitution is one way to eliminate the criminal element and thus help protect prostitutes and their customers (29% of the sub-group or 14% of all respondents);

(b) using a prostitute might divert some people from committing more offensive acts such as sexual assault (22% of the sub-group or 10% of all respondents);

(c) as long as nobody gets hurt, people should have the freedom to do as they please (15% of the sub-group or 7% of all respondents);

(d) 31% of the sub-group said that they support legalized prostitution for one or more of the above reasons, or for another reason entirely.

3. *Discussion*

Several findings from this survey should be noted in light of the upcoming review of the new street prostitution provisions. Forty-seven per cent of Canadians believe that prostitution should be legal, suggesting that future policy options, whether favourable to the practice of prostitution or not, will be controversial. Attitudes toward prostitution vary considerably across Canada both regionally and demographically.

An overwhelming majority of Canadians (71%) agree with the current legislation prohibiting street prostitution. However, there is strong support for keeping prostitution in designated areas, even among those who oppose the legislation or who favour legalization.

Because of methodological problems and potentially prohibitive costs, no formal survey was done of citizens in areas affected by street prostitution. Nonetheless, it has

been noted in different chapters of this report that individual citizens as well as citizens' groups in Toronto, Vancouver and Winnipeg most notably, have continued to complain to and lobby police departments, municipal officials and the federal Department of Justice about the continuing nuisance caused to them by street prostitution.

B. What was the Reaction to Bill C-49 in the Media?

This research attempted to analyze how the press has portrayed Bill C-49 in the five cities studied. Since newspapers both create and reflect public opinion, it was felt that this highly charged issue should be examined from the perspective of local newspapers. Specifically, we were interested in knowing what prostitution concerns existed before C-49, whether the law was favourably or unfavourably received, and what prostitution concerns existed after the law.

1. *Halifax*

The research in Halifax examined prostitution-related articles between 1983 and 1987 in the two daily newspapers -- the Mail Star and the Daily News. The vast majority of articles examined focused on street prostitution. Before C-49, the major newspaper themes focused on the nuisances associated with street prostitution and the issues underlying its control. During the first year of implementation, articles discussed the effectiveness of the law. In the second year, articles shifted to more general concerns about prostitution.

The majority of articles from 1985 to 1987 were mixed in tone with respect to the new soliciting law. In the first year of the law, a significant number of articles portrayed the law in a positive way. This proportion of positive articles dropped drastically by 1987, the second year, suggesting a certain disenchantment with C-49.

2. *Montreal*

In Montreal, the research analyzed press coverage of prostitution and Bill C-49 from October 1985 (the period immediately prior to the legislation) through April 30, 1987. Newspapers covered were La Presse, Le Journal de Montréal, Le Devoir and The Gazette.

Before introduction of C-49, the press devoted considerably more coverage to the potential negative impact of the law than to its possible benefits. Concern was voiced that the law did not address the underlying problems of prostitution and that the legislation would not be equally or fairly administered to prostitutes and clients. In early January 1986, the tone of the articles changed. Newspapers reported the success of the legislation in removing prostitutes and clients from the streets. One year later, as in other sites, the press became somewhat disenchanted with C-49, describing difficulties caused to street prostitutes, their geographic displacement and their unfair treatment in relation to clients.

Through the period studied, C-49 had significantly more negative press than positive press in Montreal.

3. *Toronto*

In Toronto, the researcher analyzed the portrayal of prostitution and Bill C-49 in the Toronto Star, the Toronto Sun and the Globe and Mail between October 1985 and December 1987. Most articles focused on street prostitution, with considerable reference being made to juvenile prostitutes. The majority of articles addressed street prostitution in the downtown area.

During the pre-law period, there was no predominant tone to the articles. From January 1986 there was a steady decline in the proportion of articles expressing approval of C-49 until 1987, when 50% of the articles were negative. Negative articles were

generated mainly by community anti-prostitution groups and prostitutes' advocacy groups. The negative articles noted that there were at least as many prostitutes on the street after the law as there were before the law, and that there were more dangers, more pimps and more organized criminals prevalent in the business. Articles about police enforcement were the most common type of positive article.

4. *Calgary*

The study of prostitution in the Calgary press was more comprehensive than that conducted in the other sites. It comprised an examination not only of articles but of reports, editorials and letters to the editor in the Calgary Herald and the Calgary Sun from February 1982 to September 1987.

The number of prostitution-related stories in both newspapers grew from 1982 through 1985 and then declined in 1986 and 1987. The stories within the prostitution subject area include national events such as the Fraser Committee hearings, prostitution problems arising in other Canadian cities such as Vancouver and Toronto, stories about "the life" in Calgary and the work of the Calgary police and courts.

Most news stories were not driven by events in Calgary, but reflected problems in other cities or countries.

The researcher states:

> ... the evidence from a study of the media suggests that Calgary's interest in legislating prostitution, soliciting or communicating for the purposes of prostitution was a passing fad that was occasioned first by the Federal Court's striking down of the city's by-law concerning loitering and recently by the creation of the Fraser Committee (August, 1988).[1]

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[1]Augustine Brannigan, Luke Knafla, & Chris Levy, Street Prostitution: Assessing the Impact of the Law, Calgary (Ottawa: Department of Justice 1989), at 9.

5. *Vancouver*

In Vancouver, newspaper articles in the Vancouver Sun and Province were analyzed for the time period January 1985 to March 1988. All articles on prostitution, including Bill C-49, were examined. Considerable press was devoted to Bill C-49 in the first two years of its existence. Much of the discussion was generated locally, with court proceedings in Vancouver being the most frequent trigger. During the first four months of enforcement of s. 195.1, there was considerable media support for the legislation, with claims that it had brought street prostitution under control. Eighteen months later, street prostitution returned to pre-C-49 levels and articles noted that many of the former advocates of the legislation (i.e., police, Crown, and anti-street prostitution lobbyists) felt that the legislation did not work because sentences being handed down by judges were too lenient.

From the summer of 1986, press reports indicated that although no one felt s. 195.1 should be left in its present form, there was not a great deal of agreement about what should be done about street prostitution.

6. *Discussion*

An analysis of the portrayal of C-49 in major newspapers in the five site studies reveals several trends.

In almost all sites studied, pre-legislation reports highlighted the problems associated with street prostitution. During the first year of the law, articles were generally positive, describing the success of C-49 in removing prostitutes from the street. In the second year, 1987, when street prostitution in many cities returned to pre-C-49 levels, articles became more negative and discussed the failures of the legislation.

Although comparisons were not made between the number of prostitution-related articles and the number of articles related to other types of crimes, a great deal of

newspaper attention appeared to be devoted to this issue. Since public opinion polls suggest that street prostitution is a minor concern to most Canadians,[2] its offensiveness appears very specific to those in "affected areas".

Comparisons were not made between the different cities studied as to the number of street prostitution-related articles, but the issue was clearly reported on more frequently in Vancouver and Toronto than in Calgary and Halifax. The concerns of resident groups in these two cities triggered numerous articles and reports.

C. What Were the Positions of the Major Interest Groups in Relation to Bill C-49 and its Effects?

As noted in the introduction to this report, Bill C-49 was proclaimed amidst considerable controversy. This section will attempt to examine the concerns of major interest groups with respect to the performance of the law.

The Canadian Association of Chiefs of Police (CACP) stated in a letter to the Minister of Justice that although the new s. 195.1 is better than the old one, it requires additional amendments to make it effective. The CACP's informal survey of police departments in major Canadian cities noted that the following changes are required:

(1) that s. 195.1 be changed from a summary conviction offence to a hybrid offence but remain within the absolute jurisdiction of a provincial court judge. This is required in order to allow police to fingerprint and photograph persons charged under s. 195.1 who are now failing to appear in court and bogging down the courts with outstanding bench warrants;

(2) that there be a minimum sentence for repeat offenders with a mandatory period of incarceration upon third conviction. This is required in order to deter prostitutes who are now routinely receiving small fines.

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[2]In a 1983 survey of the general public (at a high point in public concern about street prostitution) conducted by Goldfarb Consultants to determine the relative offensiveness of a wide range of behaviours, prostitution was seen as a relatively inoffensive act.

In January of 1987, The Canadian Association of Elizabeth Fry Societies conducted an informal survey among its members as to the effects of the new s. 195.1. Although there was no consensus among respondents, several of the agencies noted that there was an increase in violence by clients and pimps towards prostitutes. The report notes that prostitutes now work more in isolation and are confined to darker areas of the city. Increased harassment has created a situation of distrust between the police and prostitutes. Generally, it was felt that the legislation has not deterred prostitutes from continuing to work.

The Federation of Canadian Municipalities stated in a 1987 task force report that C-49 has had a positive effect in enabling police to reduce street soliciting. The federation does not endorse the recommendations of the Fraser Committee, which suggested that the provincial and municipal governments be encouraged to establish regulations to permit the operation of small bawdy houses by one or two prostitutes.

The Canadian Advisory Council on the Status of Women has advocated the repeal of s. 195.1 and the creation of a new offence covering all pressing and persistent solicitations in a public place. This recommendation would avoid singling out street prostitutes and would be a return to a pre-C-49 situation. Many feminists have recommended the amendment of s. 193 to allow prostitutes to operate their own businesses. This recommendation endorses the position taken by the Fraser Committee.

The legislation has had little effect in reconciling divergent interests.

CHAPTER VI
CONCLUSIONS

A. How Bill C-49 Was Implemented

1. *Policies*

Police forces in the research sites have adopted different policies in implementing Bill C-49. The differences are perhaps best illustrated by comparing the policies adopted in two prairie cities -- Calgary and Winnipeg. Both cities have had, and continue to have, comparable numbers of prostitutes working on their streets. Perhaps because of historical circumstances, criminal justice officials (including judges, crown attorneys and police) in Winnipeg view prostitution primarily as a moral issue. According to these officials, street prostitution is unacceptable behaviour that should be eradicated. In upholding this view, Winnipeg police have for some time vigorously arrested street prostitutes using s. 195.1 or other relevant Criminal Code sections. Relationships between street prostitutes and the police in Winnipeg have been strained.

Calgary, on the other hand, has historically viewed street prostitution as an issue of nuisance. Even before C-49, there were few arrests in this city using s. 195.1. Police in Calgary have implemented the new legislation with a view to confining street prostitution to a main stroll area in the city, where there is minimum conflict with residential usage. The stroll has been designated by police and is controlled by a vigorous program of intelligence, including identifying street prostitutes. Arrests or sting operations are used infrequently, mainly as tools of control.

Police policies regarding enforcement of the new s. 195.1 have, to a large extent, been necessitated by changes in land use in many Canadian cities. As core renewal programs in cities like Toronto, Montreal, Winnipeg and Ottawa have attracted affluent suburbanites and new commercial development to city centres, citizens and merchants

have come in conflict with the prostitutes. The research suggests that as cities continue to change, pressure to move street prostitutes is likely to continue.

2. *Procedures*

Police forces in the cities studied for this research have utilized similar methods of enforcing the "communicating" law. Enforcement is the responsibility of the morality or vice sections of the police force, with appropriate assistance being drawn from other sections or divisions. Almost all charges laid against prostitutes have been made by undercover police officers or decoys who circulate in cars on the major strolls and approach prostitutes or customers. Undercover policewomen have been used as prostitute decoys standing in known stroll areas and waiting for propositions from customers. When a discussion has taken place in which a price or dollar amount is mentioned as exchange for a sexual service, the prostitute or customer is charged by the officer.

Police in most cities use a mixture of ongoing and episodic enforcement in their implementation of s. 195.1. In Toronto, Montreal, and Calgary, sweeps, blitzes, and stings are used regularly, both in reaction to complaints from citizens and as a matter of routine enforcement.[1] The large-scale police initiatives involving customers as the targets usually require that policewomen be borrowed from other divisions, since there are few plainclothes policewomen.

Uniformed police officers are used to support the plainclothes enforcement strategies. In most cities, patrol officers routinely monitor and gather intelligence on the street scene, as well as ensure that court-imposed area restrictions are being maintained by prostitutes.

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[1]Police also try to encourage the media to report on these initiatives, in the hope that the knowledge of police activity will deter participants, particularly customers.

Police departments in most of the cities studied maintain files of photographs of prostitutes in order to improve their ability to monitor the street scene.

In two cities -- Toronto and Vancouver -- special police task forces have been created to deal with specific problem areas.

Bill C-49 has been seen as a costly and labour-intensive law according to police forces in some cities (Toronto, Vancouver and Regina). In other cities (Montreal and Calgary), the implementation of C-49 is viewed as a more routine expenditure.

In smaller cities, difficulties have arisen because members of the vice unit have quickly become recognizable to female prostitutes on the street. This has necessitated the rotation of officers among sections and, in some sites, make-up artists to disguise known officers to maintain their anonymity. In some forces there are insufficient numbers of policewomen able or willing to act as decoys to arrest customers, as well as some concern about the safety of policewomen acting as prostitutes.

3. *Charging Accused Persons under s. 195.1*

In the first two years of enforcement of the new section 195.1, almost 12,000 charges against prostitutes and customers were laid in the five major cities involved in this research. Toronto, Montreal and Vancouver accounted for the largest proportion of the total charges, with Toronto police enforcing the law with the greatest vigour. In most cities, the number of charges laid increased in 1987, the second year of enforcement of C-49, suggesting that the size of the prostitution phenomenon had not appreciably declined during the first year of the legislation and that police were perhaps responding to that situation.

One of the objectives of Bill C-49 was to apply the street prostitution law equally to prostitutes and customers. Police departments in the larger cities -- Montreal, Toronto and Vancouver -- seemed more aware of this objective than those in the

smaller cities. Equal application was achieved in Toronto, somewhat less so in Montreal, while in Vancouver, Calgary and Halifax, fewer than one-quarter of charges laid were against customers. Police forces explained that the lack of experienced policewomen able to act as prostitute decoys may have contributed to the disproportionate charging of prostitutes. Police have also suggested that the processing of customers is more time consuming and labour intensive than charging prostitutes; policewomen must wait to be propositioned by customers and require back-up officers for their protection, while policemen can more actively approach prostitutes.

In almost all cities studied, proportionately fewer male prostitutes and their customers were charged when compared to their female counterparts. In fact, only seven customers of male prostitutes were charged (all in Calgary) in the major study sites. Police forces explained that the male trade is smaller, generally less of a nuisance and more difficult to infiltrate than the female trade. Critics suggest that the homosexual trade has been left alone because many police officers are uneasy about posing as male prostitutes or customers.

Customers were quickly processed by the courts in most of the cities studied. Most customers pleaded guilty at the first opportunity. Prostitutes tend to have significantly more court appearances than do customers, perhaps because they are more likely to be detained at arrest, to plead not guilty, and to fail to attend court at least once.

Police in many cities suggested that a substantial number of bench warrants have arisen because prostitutes failed to attend court. They stated that prostitutes often provided false identification to avoid going to court and that the inability to fingerprint prostitutes, and to establish their identity, was a major impediment to tracking these men and women. In Vancouver, Montreal and Toronto, one-fifth or more of prostitutes had bench warrants issued. It is, however, difficult to determine with certainty whether these "fails to appear" can be directly attributed to an inability to fingerprint, especially

since many of the prostitutes are known to forget about court dates and to "shop" for judges.

Conviction rates on the communicating charges were high in all sites -- between 75% and 90%. According to this indicator (of the ease of application of the law) C-49 has been relatively effective.

4. *Sentencing s. 195.1 Offenders*

Offenders were sentenced differently in the cities involved in this research. Fines predominated in Halifax, Montreal and Calgary, with fine amounts in Montreal being almost twice as large as in other cities. In Toronto and Vancouver an array of sentences were used, including discharges, fines, probation and imprisonment. Prostitutes were sentenced more severely than customers in every city, but this was in part owing to their more extensive criminal records. However, when prior record was controlled (only first-offender prostitutes and customers were included), prostitutes in Vancouver appeared more severely sentenced than their clients.

It is worth noting that prostitutes with prior communicating convictions received jail sentences in over one-third of cases in Montreal and Vancouver, and in almost one-half of 1987 cases in Toronto. This suggests that comments stating that s. 195.1 sentences have been lenient may be misleading. Furthermore, upon examining the 1986 and 1987 Toronto sentences, it was found that, over time, the sentences became harsher for both prostitutes and their customers (even when prior record was controlled).

Nevertheless, sentences were not seen by most criminal justice respondents as a deterrent to participants in the street prostitution business. Many saw the fines as a "licence fee" for the working prostitute. Respondents in the social service sectors viewed the fines as further criminalizing and entrenching prostitutes in the trade. It was often observed that, although some individual customers were traumatized by their arrest and

court experience, there were too many customers, with too low a likelihood of being caught, for general deterrence to be effective.

While the majority of prostitutes interviewed for this research reported a reduction in the number of customers, the continued presence of large numbers of cruising customers on the strolls in Montreal, Toronto, Winnipeg, Regina, Calgary and Vancouver suggests that customers have not been seriously deterred. Similarly, the continued presence of street prostitutes in these cities suggests that the possibility -- and, in some cities, the likelihood -- of being charged, processed, and perhaps imprisoned has not appreciably reduced the number of female street prostitutes.

B. Changes in the Practice of Street Prostitution Since Bill C-49

The primary objective of the new street soliciting legislation was to enable the removal of street prostitutes and their customers from downtown neighbourhoods. It is impossible to measure changes in the absolute number of street prostitutes (official figures do not exist). Rather, when street counts are compared to data available from similar research in 1984, and when key respondents are questioned, it appears that there are no fewer prostitutes post-C-49 in Toronto, Vancouver, Winnipeg, Regina and Calgary. In Montreal, Quebec City, Niagara Falls, Ottawa and Halifax, the numbers appear to have diminished. Problems surrounding this issue persist most noticeably in Toronto and Vancouver, according to police and citizens' groups.

There is little evidence that the socio-economic characteristics of street prostitutes in any of the sites studied are different than they were before the new law. Most simply have longer criminal records. As in 1984, they are predominantly young, poorly educated and have limited work experience. In cities where economic conditions are harsher, as in Halifax, Regina and Winnipeg, research suggests that most have difficulty leaving "the life".

Research also suggests that as a result of the enforcement of C-49, street prostitutes in many of the sites studied (Toronto, Vancouver, Montreal and Winnipeg) were geographically displaced to new areas within the city core, either temporarily or permanently. There is little evidence that the law caused prostitutes to move indoors. When the number of advertisements for escort services or massage parlours were analyzed over time, they showed few significant changes. Police forces generally corroborated this view.

Perhaps the clearest conclusion of this evaluation is that police enforcement of the new s. 195.1 did not suppress the street prostitution trade in most cities. The main effect was to move street prostitutes from one downtown area to another, thereby displacing the problem.

1. *Responses to Bill C-49*

An analysis of the portrayal of C-49 in the major newspapers in the five principal sites studied reveals that the positive first-year press coverage became negative in tone as street prostitutes in most cities returned to their pre-C-49 levels. Press reports indicate that although almost no one interviewed feels s. 195.1 should be left in its present form, there is not a great deal of agreement about what should be done.

Although this research did not formally survey citizens in communities directly affected by street prostitution, the results of public opinion polls on this issue are available. Several findings from a survey on prostitution commissioned by the Department of Justice in 1986-1987 are worth noting. Canadian attitudes as to whether prostitution should be legal or not are divided (47% for and 47% against), suggesting that the issue will remain controversial. Among those who favour legalization of some sort, there is strong support for keeping prostitution in designated areas. At the time of the poll, 71% favoured the provisions of Bill C-49 prohibiting street prostitution.

Lobby groups, including the Canadian Association of Chiefs of Police, the Federation of Canadian Municipalities, the Canadian Association of Elizabeth Fry Societies and the Canadian Advisory Council on the Status of Women, remain divided. The legislation has not reconciled their divergent interests.

On December 1 and 2, 1988, the Supreme Court of Canada heard appeals from the Nova Scotia Court of Appeal (Skinner),[2] the Alberta Court of Appeal (R. v. Jahelka)[3] and a reference case from the Manitoba Court of Appeal (R. v. Cunningham),[4] which all deal with the constitutionality of s. 195.1. A decision will be forthcoming.

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[2]Supra, Chapter III, note 13.

[3](1987), 36 C.C.C. (3d) 105.

[4](1987), 31 C.C.C (3d) 223.

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